As a politician, he sometimes served as public official, sometimes as king-maker, but in any case he always was an undeniable presence.

Still, Mr. Witt remained quite unaffected by his rise to fortune and influence. As the head of Arkla Gas Co., he constantly expressed concern for what he called the "biscuit cookers," and his euphemism for the little guy became a household term across the State. He brought leaders from across the Nation to his office in Little Rock for luncheons of peas and cornbread. And he enjoyed nothing more than driving the tractor at his farm in his hometown of Prattsville.

To Witt Stephens, the whole world could be summed up in the nickname of his native State: "The Land of Opportunity." You do not meet many legends in Arkansas, but I am certainly glad to have had the opportunity to eat peas and cornbread with one in the person of Witt Stephens.

TRIBUTE TO MINNESOTANS OF SUPER BOWL XXVI

Mr. DURENBERGER. Mr. President, today I rise to say what most Americans already know: that Minnesotans outdid themselves this past weekend as hosts of the Super Bowl.

In 1967, First Lady, Lady Bird Johnson wrote to the Minneapolis mayor, "Some day the city will surely be a showcase in the country." Well that day has most certainly arrived in 1991 as the Twin Cities and Minnesota have been host to major sporting events such as the Stanley Cup finals, the U.S. Open, the International Special Olympics, the World Series, and of course the Super Bowl. About the only world class sporting event we have not hosted is the Kentucky Derby, and we are working on that.

I am so proud of my fellow Minnesotans who welcomed over 60,000 people to the Hubert H. Humphrey Metrodome for Super Bowl XXVI and thousands of others to our State. Even our weather cooperated for the Great Minnesota warm-up.

Images of Minnesota hospitality and creativity were on display for the world to see. Over 4,000 volunteers were available to greet guests at the Minneapolis/St. Paul International Airport, provide directions and other assistance to visitors. It is impossible to mention all the events and people individually, but I would like to try mention a few.

Congratulations should be extended to the people of St. Paul for organizing another great winter carnival and for making the dream of a breathtaking ice castle become a reality; to over 1,500 Minnesotans who performed in the Super Bowl half-time show organized by Timberline Productions; to the participants in the Youthful Pregame Show such as the Minnesota jazz group, Moore by Four, 11-year-old Melissa Muench of Eden Prairie, the Anoka, Blaine, and Eden Prairie High School Bands, the Metropolitan Boys Choir, and the Greater Twin Cities Youth Symphonies.

Thanks to the Twin City churches who provided transportation to their services; to over 850 taxi drivers; to all the Metropolitan Transit Commission employees; to city, county, and State employees who helped with security, maintenance, snow removal, and other logistical details; to Wayne Kostroski of Goodfellows who organized 28 NFL cities' restaurant food extravaganza without parallel ever, and to the hospitality industry for quality lodging, food, and entertainment.

Minnesotans have been dreaming of the opportunity to host the Super Bowl for 9 years. Countless individuals have been involved. Some people who have been involved throughout this process include the Minnesota Super Bowl Task Force of Barbara P. Burwell, John Cole, Jeff Diamond, Bill Dunlap, James C. Erickson, Roger Headrick, Ron James, Bill Lester, Harvey B. Mackay, David L. Mona, Greg D. Ortale, Robert M. Price, Paul Ridgeway, Jay H. Wein, Wheelock Whitney, Stewart Widdess, and Steve Winnick, and the Super Bowl task force's 22 staff members.

Paula Gottschalk, executive director of the Super Bowl task force was outstanding. The one person who deserves everyone's gratitude is Marilyn Nelson, chair of the Super Bowl task force. Without Marilyn there would not have been a Super Bowl in Minnesota. With all of the activity surrounding the Super Bowl weekend, Marilyn is still able to fly to New York to see her newborn first grandchild, Alexander.

The truly remarkable quality of the Super Bowl weekend came about because the Minnesota spirit was always at the surface and has much depth. Minnesotans love sharing the sights, sounds, taste, and feel for our unique and much loved State. Super Bowl XXVI is the first Super Bowl that was hosted, not by a city, but by an entire State, and once again, the combination of Minnesota's rural and urban charm worked perfectly. I commend and congratulate all of the efforts made in Minnesota during the Super Bowl celebration.

We would like to extend our thanks to the National Football League and fans throughout the country, especially the Washington Redskins and their fans, and the Buffalo Bills and their fans for allowing us to host such a spectacular event. You were most gracious with your compliments and friendship. We welcome you to visit Minnesota again!

In 1886, a New York newspaper called the Twin Cities area "another Siberia, unfit for human habitation." This past week, we proved that no matter what the climate is, it is the warmth of people and their hospitality to guests that makes a place special.

Minnesotans, you showed the world why we are justly called "The Star of the North."

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business is closed.

S. 12

CABLE TELEVISION CONSUMER PROTECTION ACT

The PRESIDENT pro tempore. The Senate will resume consideration of S. 12, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming, and so forth and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDENT pro tempore. The Senator from Hawaii [Mr. INOUYE].

Mr. INOUYE. Mr. President, the measure before his body, S. 12, has been on the calendar since June 11, 1991. It was reported out of the Commerce Committee by a vote of 16 to 3. In the last Congress, an identical measure was reported out of the Commerce Committee by a vote of 18 to 1. In order to accommodate all of my colleagues who have had some interest in this measure, we have waited all these months, leaving it on the calendar.

Then about 2 weeks ago we were advised that a substitute was in the making. Last night, we finally got a glimpse of the substitute.

Today, I have been advised that the prime author of the substitute will not be able to be in attendance because of an injury. Mr. President, we are willing to give the prime author a live pair. There are many other authors, so we have been told. In fact, it has been identified as the Packwood-Stevens-Kerry substitute amendment.

Mr. President, the bill before us is the result of 13 days of hearings and 113 different witnesses. We have had countless numbers of communications experts and lawyers look over the measure. We have conferred with, in addition to the 113 witnesses, at least 500 knowledgeable citizens.

Mr. President, I wish to advise the Senate that this committee is prepared and ready to proceed. I think we are asking for too much to further delay this measure. In the last Congress, we delayed it until the eve of adjournment, and we finally found ourselves caught in that mess. I hope that is not the intention of those who oppose S. 12.

Mr. President, as the manager of the Democratic side, I am prepared to proceed, and I have been advised by the manager on the Republican side that he is prepared to proceed. Is the pending business the Packwood-Stevens-Kerry substitute amendment, Mr. President?

The PRESIDENT pro tempore. The pending business is S. 12. The pending question before the Senate is adoption of the committee substitute.

Mr. INOUYE. I have no objection to proceeding on that.

Mr. GORTON. Mr. President, will my distinguished colleague yield?

Mr. INOUYE. I am very happy to yield.

Mr. GORTON. Mr. President, I simply wish to join in the remarks and the statement of the history of S. 12, which the distinguished Senator from Hawaii has just shared with us. We had a long day and a half on opening statements on this bill. I made my own, as did he and many others. We have now had a considerable period of time during which amendments have been discussed and a number accepted, including two sponsored by this Senator, with the happy acquiescence of my friend from Hawaii, the manager.

I think it is safe to say that to this point even those amendments which have been dealt with which required rollcall votes did not go to the heart of this measure. They dealt with rather peripheral issues. We have been aware of the fact, almost from the date last June on which this bill was reported, that there might well be a substitute for it. In fact, I have in this notebook an outline of what purports to be a substitute for this proposal, one which I joined with the Senator from Hawaii in believing to be inadequate to deal with the problems and the challenges which led to the introduction of this bill and this debate. We are now waiting patiently, I hope, but not with inexhaustible patience, to hear whether or not such a substitute will be adopted or whether it is appropriate simply to proceed to adopt the committee substitute and move to final passage.

So I join with the Senator from Hawaii in reporting through you, Mr. President, to all of our colleagues, and to all of the offices which may be listening in, we are here. We are open for business. We are ready for business. We want an opportunity to debate the bill, but we also want the opportunity to bring that debate to a reasonable and appropriate close.

Mr. INOUYE. Mr. President, I think it should be further noted that the Democratic leader had scheduled S. 12 to be considered 8 days ago. In order to make certain that all accommodations were made, a final request was granted, and that request was to delay this for a week, which we did. This measure should have been completed and on its way to the House by now. I suppose, if we go along with this new request for delay, it will not end until the eve of adjournment.

Mr. President, I can assure that as long as I am chairman of this committee I will not permit that to happen. So, Mr. President, I will suggest the absence of a quorum, but it will be for 10 minutes, and if the Members are not here at that time, I will request that we proceed with the pending order.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, a few moments ago, I suggested that the quorum last for 10 minutes. Two Senators have arrived here with their amendments, and they are now working out the details. So we are almost prepared to proceed. However, to make certain that all of the "i's" are dotted and the "t's" are crossed, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I ask unanimous consent to speak for just a few minutes as in morning business for the purposes of introducing a bill.

The PRESIDENT pro tempore. How many minutes does the Senator request?

Mr. PRESSLER. Five minutes.

The PRESIDENT pro tempore. Is there objection?

The Chair hears no objection, and the Senator from South Dakota [Mr. PRESSLER] is recognized for not to exceed 5 minutes as in morning business.

Mr. PRESSLER. I thank the Chair.

(The remarks of Mr. PRESSLER pertaining to the introduction of S. 2168 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDENT pro tempore. Under the rules, if no Senator seeks recognition, it is the duty of the Chair to put the question.

Mr. BINGAMAN addressed the Chair.

The PRESIDENT pro tempore. The Senator from New Mexico is recognized.

AMENDMENT NO. 1511

(Purpose: To provide instructional channels)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its consideration at this time.

The PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1511.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 116, between lines 14 and 15, insert the following:

SEC. . Section 611 of the Communications Act of 1934 (47 U.S.C. 531) is amended by adding at the end thereof the following:

"(g) INSTRUCTIONAL USE.—

"(1) For purposes of this section, a cable operator acquiring or renewing a cable system franchise after January 1, 1992, shall be required to have at least 1 channel designated for instructional use. In any case in which a cable operator of a cable system, after January 1, 1992, adds an additional 10 or more channels to that system, such operator shall be required to designate at least 1 of such additional channels for instructional use.

"(2) For purposes of this section, 'instructional use' means a use which provides information or instructions of such a nature that can be integrated with elementary, secondary, vocational/technology or postsecondary curricula, or can be used for professional staff development and training.

"(3) No cable operator shall be permitted to delete from the cable system of such operator any signal of a noncommercial educational television station for the purpose of complying with the provisions of this subsection.

"(4) Within 180 days following the date of the enactment of this subsection, the Commission shall issue such regulations as may be necessary to carry out this subsection.".

Mr. BINGAMAN. Mr. President, let me briefly describe what this amendment does. It is a very straightforward amendment.

It says that a cable operator acquiring or renewing a cable system franchise after January 1 of this year, 1992, shall be required to have at least one channel designated for instructional use.

Then it goes on to say, in any case in which a cable operator of a cable system, after January 1, adds an additional 10 or more channels to that system, the operator shall be required to designate at least 1 of those additional 10 channels for instructional use.

And then we define "instructional use" in the amendment also by saying it means a use which provides information or instructions of such a nature that can be integrated with elementary, secondary, vocational/technical, or postsecondary curricula, or can be used for professional staff development and training.

Mr. President, the purpose of this amendment is, I believe, to focus the attention of the Senate and all who are considering this bill on our primary objective here in the Congress. Hopefully, our primary objective at all times is to serve the public good.

We have an enormous technological capability in cable television today. You can walk into the cloakroom right off the Senate floor here and you have channels from 2 to 36 that are available and everybody can watch them.

As you watch those channels, something becomes pretty clear—at least, it does to me—and that is that most that are on there are not worth watching. Most of what are on there are situation comedies, soap operas during the day, cartoons which start as soon as kids get out of school. They can watch cartoons on six or eight different channels. There is virtually nothing that could be in any way described as educational, instructional or informative.

That, I think, differs from the policies that are pursued in many other industrialized countries where I think the government has taken a more aggressive position in ensuring that some of the network, some of the airwaves are reserved for instructional, educational, and cultural broadcasts. We have done very little along those lines. We have public television. And clearly public television is here.

I am a great supporter of public television. I think they do a wonderful job considering the constraints they operate under.

But as we add more and more technological capabilities, more and more channels, it seems to me unreasonable to say that we are meeting our responsibility to the public by merely allowing 1 channel out of 35 or 1 channel out of 30 or 1 channel out of 100 to be devoted to public concerns.

This is an issue that I think particularly comes to light, Mr. President, when you realize the great additional instructional programming that is going to be available in the very near future. The public broadcasting system is putting up an educational satellite. In fact, July of 1993 is the estimated operational date for this educational satellite. It will have a capacity of up to three channels over which they can provide instructional programming.

Now, the question is, Is any of that going to be available for people to observe from their houses? Or are you going to have to go down to a school? Or are you going to have to enroll in a program at a university in order to see any of that instructional programming?

Under the present law, in the bill that is pending before us, there is, as I understand it, a requirement that public television be included in the mix of things that cable systems carry, and that is all to the good.

There is also a provision that says cities may impose an additional requirement of up to three channels in their discretion, they may or may not as they choose, for public access purposes and that presumably could become instructional or educational but could not and of course cities could determine they did not want to do that.

My amendment is prompted by a belief, a strongly held belief I have, Mr. President, that this is not adequate, that there are people out there in America who like to see something that is better than what we are seeing on television today. If we have 80 or 100 channels available to the average American cable subscriber in the next few years, do we really need to have 10 or 12 of those showing different reruns of "I Love Lucy"? Is there not something better we can do with that technological capability to serve the needs of our country?

President Bush has given numerous speeches——

The PRESIDENT pro tempore. Would the Senator withhold until the staff takes seats? The Senate will be in order.

The Chair apologizes to the Senator.

Mr. BINGAMAN. I thank the Chair. I was just pointing out that President Bush has given many speeches where he has said we need to be a nation of students. We all need to again commit ourselves to learning, and that is part of this America 2000 initiative: to improve our educational system. I agree with that.

I agree that we need to do more to instruct people. We need to give them more opportunities to learn at all levels, not just elementary students, but at all levels of the educational system, all levels of society.

This amendment tries, in a very modest way, to ensure that that capability would be there, that that opportunity would be there for Americans to watch some decent instructional television on their cable systems.

I do not consider this an anticable amendment. It is not my purpose to do something here that would be onerous to cable operators. That is why I have drawn the amendment in such a modest way.

As I pointed out before, the amendment would merely require that if you add 10 new channels, at least 1 of them should be for instructional or educational purposes. I do not think that is an undue burden. I think that is something that is a reasonable requirement. I think that it can do a lot of good for the future of our country. I think for us to have this great capability the technology is permitting us to have today, and allow all of it to be used for situation comedies, for cartoons, for soap operas is just not doing right by the American people.

So, Mr. President, I think my amendment is a good one. I know that the chairman of the committee who is the manager of this bill has some strong feelings on this and wishes to express those before we have a vote on it and accordingly, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I, at this time, ask unanimous consent to add Senator BYRD as a cosponsor of the amendment that I have already sent to the desk.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BINGAMAN. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been noted. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, the proposal suggested by my dear friend from New Mexico is one that is worthy of the most serious consideration by the U.S. Senate.

As the Senator has pointed out, all of us—the President, Members of the House and Senate—have spoken eloquently about the importance of education and the role that the electronic media could play in assisting this Nation's cause for education.

Mr. President, this measure before us, S. 12, will grant to the franchise authority all the power it needs to set aside channel or channels for that purpose.

As I have tried to suggest, this is a balanced, well-crafted bill. However, because of the merit of this amendment, I suggested to my friend that this matter be taken up at our next hearing on cable legislation which will occur next month, just about 2 weeks from now. I wish to assure him that, if this amendment is withdrawn, that matter will be on the agenda and it will be given the most serious consideration by my committee.

Mr. BINGAMAN addressed the Chair.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me respond to the Senator from Hawaii that I appreciate that suggestion and I will certainly defer to his desires in this regard.

I do think that this is an important issue. It is one that in the long run can do some good for the people of the country. I really think if the people of the country were able to speak today and if we were to do a poll today of the American people to ask them whether they think we should set aside more of our television channels for instruction and education, that they would, in fact, uniformly agree that should be done. So I think the amendment has merit.

I understand the situation that the chairman of the committee is in, with having formulated a delicate balance of support for the bill as it presently stands. I do hope that this matter can be given consideration and we can make this part of the law before the year is out.

In light of that, I will at this time withdraw the amendment from further consideration.

The PRESIDENT pro tempore. The amendment is withdrawn.

The amendment (No. 1511) was withdrawn.

Mr. INOUYE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been noted. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICA'S FUTURE

Mr. BYRD. Mr. President, after months of fanfare and heightened expectations, the President came to the Capitol the evening before yesterday to unveil to the Nation his plan for America's future. The President offered us a menu of proposals, most of which have been served up before. He resurrected so-called solutions like the line-item veto, a capital gains tax cut, and thread-bare ideas like enterprise zones that have been around quite awhile and trickle-down economics.

The President proclaimed the end of the cold war, but did not outline a strategy for taking a hard look at our defense capabilities in light of new world circumstances. It is not enough to say we will cut a little more now, and reduce some of our huge triad of strategic systems. The Soviet Union has ceased to exist and we must now fashion appropriate roles, missions, and forces that reflect our changed security needs—security from the standpoint of our defense budget.

When we speak of our security needs, we also speak of many items that are funded under the domestic discretionary head. Because, in the first place, for a nation to be strong militarily, it must be strong economically, and for a nation to have the utmost in the protection of its national security under that great umbrella there is also included a very important foundation called economic security.

We should be discussing new job opportunities for our retiring servicemen and servicewomen. Senator NUNN addressed the Senate earlier today on that subject.

Surely we do not need to add more B-2 bombers, yet the President is asking for five more—whatever for? They are hideously expensive. Surely we do not need another $5 or $6 billion for SDI, as if the evil empire of the Reagan years were still operating. I believe there is a window of opportunity here to divert unnecessary defense spending to critical domestic needs. It will take careful thought and a top-to-bottom and bottom-to-top survey of the defense budget to seize that opportunity. Unfortunately, the President's budget does not provide any details for his defense budget. We will not receive those until February 20, 3 weeks from now. That will cause a serious delay in congressional consideration of the administration's defense plan.

Perhaps the New Hampshire primary has something to do with that. I do not know, but it could have something to do with it.

It is obvious that there must be a major reevaluation of our military and defense needs. It seems to me there should be. Part of that reevaluation should focus on the waste that occurs in the Pentagon's handling of its inventories. The recent "60 Minutes" piece on the Defense Logistics Agency exposed at least $35 billion, and probably more, in excess inventory at its facilities throughout the country.

Now, the distinguished Senator from Michigan [Mr. LEVIN] addressed the Senate earlier today on this very point. He pointed out that there is a $100-billion inventory of supplies in the defense depots throughout the country. He pointed out that there was another $100 billion of inventory supplies at defense bases throughout the country. And then he stated there is an additional $50 billion stored at contractor locations. That is $250 billion in military supplies on storage throughout the country.

Can anyone argue with a straight face that that money has been well spent, that it is necessary to have that much money tied up in washers and machine tools and pajamas and Maalox, et cetera? Can anyone look me straight in the eye and argue with a straight face that that is money well spent?

Can we not cut our defense budget? Can we not find ways to cut out that needless waste? I say needless waste; there is always going to be some waste in every department, I am sure. But this is an exorbitant amount of money tied up in military supplies.

I watched that "60 Minutes" program. I was shocked. And I think any taxpayer would have viewed that program with indignation and frustration and disappointment. This is waste of the worst kind, and it must not be overlooked as we search for ways to cut back on defense spending. And it will not be overlooked.

On the domestic front, for more than a year and a half now, our economy has been mired in a recession. What has been the administration's response? For more than a year and a half, the administration has ignored the recession. It was simply not existent; it was not serious, we were told. There was not any recession. The American people have had to wait—wait until January 28 and the State of the Union Message. The American people waited, with incredible patience. And what did they get for waiting? They got 14 tax proposals, many or most of which favor the well-to-do. What they did not get was any hope for the millions of American men and women standing in unemployment lines.

Those men and women need jobs. They would like to pay taxes. They would like to be working. They would like a job so they can pay taxes. They need jobs, before they can benefit from tax cuts. They need the Federal Government to step up to the plate and fulfill its role in making American workers the best, the most skilled in the entire world, not to retreat even further from the challenges laid before us by an increasingly competitive world. Some of the tax proposals might be beneficial to selected industries, and some of them I may very well be able to support.

Most economists, if I am reading the printed press organs correctly, agree that these actions alone will not pull the economy out of its nosedive, and certainly will not provide this country with the wherewithal that it might again be competitive, truly competitive, in the global markets.

As far as the President's plan to "freeze all domestic discretionary budget authority," I would point out that a growing majority of the American people support increases in spending for public investment.

The President, once again, asked for the line-item veto, as if this were the answer to the massive deficits that have occurred during his Presidency and that of his predecessor, Ronald Reagan.

I like this President. I think he is a very personable individual. And he has always been very nice to me. He came by to visit my office yesterday. He said he knew that we would be in disagreement on the line-item veto, and I said, "Yes, Mr. President, but we will not spend much time on that, because it is not going anywhere." So we had a laugh out of that. I know that he is sincerely supportive of such, but I do not think that will be around the Senate very long.

But what created the massive deficits were the massive buildups in military spending during the Reagan years, and the massive tax cut of 1981. Those were the two major factors. More recently, the savings and loan bailout and the recession have added to the deficits. So the line-item veto is not the answer.

The national debt, which took 192 years and 39 administrations to reach $932 billion on January 20, 1981—the day that Ronald Reagan took office—rose to $2,683,000,000,000 on January 20, 1989, the day he left office.

And on January 20, 1992, after 3 years under President Bush, the debt stood at $3,694,000,000,000—an increase of $1,011,000,000,000 in just 3 years.

The interest on that debt for fiscal year 1993 is projected to be $212 billion.

That is more than the entire domestic discretionary budget for fiscal year 1993.

If the President were able to line-item veto the entire domestic discretionary budget, it would not even cover the interest on the national debt.

The President talked about pork-barrel appropriations and called for the elimination of programs with noble titles.

He failed to mention that his budget will include a request of $650 million for the superconducting super collider.

That is a 34-percent increase.

It has a noble sounding name—I am not sure that it is a very descriptive name insofar as the average layman like myself is concerned—but is not an essential research and development program.

In addition, the President did not mention that his 1993 request for the space station is $2.250 billion.

With all of the unmet human and physical infrastructure needs facing this Nation and with too little funding to address them, we may well have to substantially cut or even eliminate this request.

Our problems are severe and they are right here on Earth.

Exotic luxuries like the space station and the super collider perhaps ought to be put off or canceled until we can shore up our faltering economy.

When the President calls for a freeze on domestic discretionary budget authority, he is actually calling for a real cut.

The domestic discretionary budget authority for fiscal year 1992, according to the President's budget was $202.7 billion.

The cap for domestic discretionary for fiscal year 1993, according to the President's budget, is $206.1 billion.

So a freeze at the 1992 level would amount to a cut of $3.4 billion in fiscal year 1993 domestic discretionary budget authority below the 1993 cap.

The CBO baseline for 1993, which equals last year's appropriations plus inflation, is $211.3 billion. So the President's proposed freeze would amount to a real cut of $8.6 billion in domestic discretionary initiatives.

I hope that Senators will listen and will take heed to what I just said because it will not be long, as we begin to take up the 13 appropriations bills, that there will be requests coming from all Senators for additions to the appropriations bills, for funds to address various and sundry needs that these Senators consider to be important.

Senators will attest to the importance of additional funds for various programs. But I hope they will keep in mind that a Presidential freeze will mean $8.6 billion in real cuts in domestic discretionary programs, and to the various Senators who are on the appropriations subcommittees, they might very well take heed as to the problem that would be caused when it comes to allocating moneys to subcommittees. Senators know that even last year the subcommittees were strapped, and for many years have been strapped for funds. So an $8.6 billion cut in real terms will certainly be reflected in the allocations to the subcommittees.

I am talking about real cuts in such programs as job training, education, infrastructure, highways, bridges, airports, rivers and harbors, health programs, crime, war on drugs, and so on. I know that the President is very supportive of several of these programs—the war on crime, the war on drugs, and so on—but we have a lot of infrastructure needs out there that will certainly go without attention if such a freeze were to take place.

The needs of the American people are not frozen.

These are the programs that directly benefit our economy and our people and which spur private investment and productivity. Yet, the White House wants to cut them back.

We will be having some discussions about this subject from time to time, and I will point out again and again how those programs have been cut back for the past dozen years or more.

As I watched the President, I saw no immediate burst for the economy in any of his numerous tax cut proposals.

These proposals alone will not right our economy.

Worse, I saw no real long-term vision, no long-term plan, no realization apparently that our Nation is in serious trouble over the long run unless we begin to invest more in America and the American people.

We ought to use direct Government spending to address our Nation's economic plight and its competitive position in the world.

We must look at investments for the long run. We have an investment deficit in this country, not just a Federal funds deficit, not just a trade deficit, but also an investment deficit, an investment deficit that impinges upon our ability to compete. Public investment leverages private investment and stimulates economic growth, provides jobs, increases productivity, and enhances our ability to compete with other countries. Such increased public investment need not increase the deficit if we wisely use the peace dividend here at home.

I believe that is what the American people would like for us to do—turn our attention to the crucial problems right here in our own backyard.

That is the only way that we will remain a great nation.

Mr. President, I yield the floor.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

RETRANSMISSION CONSENT

Mr. SEYMOUR. Mr. President, most of the spirited debate that has occurred on S. 12 has focused on the best method to control cable rates and encourage effective competition in the multichannel video marketplace, and rightly so.

However, I rise today not to continue this rate debate but to take a moment to discuss other concerns I have with S. 12.

Mr. President, there is plenty in S. 12 that has little to do with rate regulation. For example, the legislation contains provisions that require carriage of local broadcasters by cable operators. These provisions, known as "must-carry," are crucial to many local broadcasters in my State of California.

Let me state for the record that I support must-carry rights for local broadcasters, especially public television and the small, independent stations—the little guys that are not as widely viewed as the broadcast affiliates.

Many local stations are truly that: local. They provide a unique service in their area that gives true meaning to the word "community." Therefore, I strongly believe that it is in the public interest that local, public, and educational over-the-air stations serve as a component of a cable operator's basic service package.

But there is one provision which takes the cable bill a step beyond must-carry. In fact, this provision presents a different side to the cable TV debate—a side with a good number of questions that in my mind remain unanswered. It is a provision that has never been fully explored in Senate Hearings and was not included in S. 12 until the full committee markup. Yet, that provision will affect every element of the television marketplace—TV stations, cable operators, program producers, and more important, consumers.

I refer, of course to the retransmission consent provision found in section 15 of the bill.

Mr. President, under retransmission consent, a television broadcaster would have the right to negotiate with the local cable operator or operators in the area to set a price that the operators would pay for the over-the-air TV signal that cable retransmits.

On its face, this provision sounds very simple and even logical. However, I met with many Californians to discuss this provision. I sat down with television broadcasters from San Diego, cable operators from San Francisco, and program producers from Los Angeles, just to name a few. Hundreds of

Californians have written to me to share their insight on what this one provision means to them.

I must say, Mr. President, they have worked together, though certainly not in concert, to destroy any preconceived notions of the simplicity of retransmission consent. Indeed, several basic questions need to be raised here.

For example, what happens if a cable operator refuses to pay a broadcaster even 1 cent for his signal? Is every cable subscriber in the entire community going to be denied access to the affiliate's signal?

Some have answered that a cable consumer can simply disconnect his or her cable unit, or install an "A/B" switch, and pick up the over-the-air signal. That sounds simple. Again, it is even logical. However, it is not that simple.

Many consumers who live in rural, or mountainous areas with poor over-the-air reception do not have the ability to receive network programming beyond the cable wire. For them, an "A/B" switch is nothing more than an "on/off" switch. Also, others may not have the know-how to switch from antenna to cable and back again.

Another obvious question I have for those who seek to limit cable rates is, "Who is going to pay for retransmission consent?" I have heard this question often from cable consumers, even though I am quite sure they already know the answer: If a broadcast affiliate requires a cable operator to pay what amounts to a $1 per cable consumer, do you not think that a cable operator is going to pass that amount on to the consumer in the form of higher rates, or cuts in new programming or services?

Of course he is.

Now I understand that an amendment was recently attached to S. 12 to ensure that cable operators cannot use retransmission consent as an excuse to raise rates. Thus, cable operators will be forced to make up the cost in other areas to pay for retransmission consent. Maybe they will do so by reducing technology research and development—the kinds of investments that improve the quality of cable service, expand channel capacity, or provide other innovations to consumers.

Maybe some cable operators will pay for it by reducing or dropping support of community access channels. There are many of those in California—many funded completely by the cable operator. These access channels provide programming of community interest, such as Pop Warner football or city council meetings, and many are produced by young people trying to gain experience and a foothold into the highly competitive visual production industry.

Or maybe the cable operator will devote less funds to programming, which is not only a source of quality to cable consumers but a source of jobs to Californians who work in the television production industry.

In short, Mr. President, someone is going to have to pay for retransmission consent. If it is not the consumer, it will be something or somebody else that provides a tangible or intangible service to the consumer.

Finally, I am also concerned that this provision has not shown enough sensitivity to the rights of program producers—the ones who create the programs that are carried over the air and through the cable wires.

Let me remind my colleagues that broadcasters do not own most of the programs they air. They license them from program producers. Program producers are the main reason why America's consumers do not watch test patterns. And over the past decade, as expanded channel capacity increased the demand for new programming, the producers have responded with a new wave of innovative shows.

Nonetheless, the interests of the creative element of America's video marketplace do not appear to have been taken into account in retransmission consent. Will they have a chance to participate in the negotiations over who carries their programming?

I believe that the chairman and ranking member of the Copyright Subcommittee have a number of questions about retransmission consent's impact on the Copyright Act's compulsory license. As they well know, the general counsel of the Copyright Office testified before the House Subcommittee on Intellectual Property and Judicial Administration last July, and she concluded that retransmission consent "does have an effect on the compulsory licensing scheme and alters the copyright balance struck in 1976."

I understand that my distinguished colleagues from Arizona and Utah have asked the Copyright Office for a report on how the two interact. My concern is that this body may be jumping the gun by passing this provision now without first knowing the full impact of retransmission consent on current law.

I would like to commend the Commerce Committee for recognizing in its report on S. 12 the right of a programmer to enter into a contract that limits the scope of a licensing agreement with a broadcaster. Their report makes clear that existing or future contracts can limit a broadcaster's ability to opt for retransmission consent, or guarantee the program producer a share of the proceeds if a broadcaster benefits from retransmission consent, or any other terms warranted by the marketplace, specifically, the committee report states:

> The committee emphasizes that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and program suppliers, or to limit the terms of existing or future licensing agreements. (S. Rpt. 102-92, p. 36.)

Once again, I commend the committee chairman for supporting the right of program producers to freely contract to protect their properties. However, I raise several important questions: When a broadcast affiliate seeks compensation from a cable operator under section 15 of this bill but without the consent of the producer, does that not work to "abrogate or alter" existing contract agreements between the broadcast affiliate and the producer?

Furthermore, does not the compulsory license, which is the existing law, give a cable operator a legal right to carry a local over-the-air signal without the permission of the owners of either the signal or the programs carried over it? Is that not also altered by S. 12's retransmission consent provision?

I have raised a number of basic and technical legal questions that underscore my present concerns with retransmission consent. Indeed, at this time, it is a provision that offers more questions than answers. Therefore, I am hopeful that during consideration of cable legislation by the House of Representatives, greater attention will be afforded to the questions I have raised, the rights and concerns of program producers, and the conclusions offered by the Copyright Office and other experts in the field.

I look forward to taking part in seeking the answers to these questions and others that may be raised in the future on this important provision in S. 12.

I thank the Chair. I yield the floor.

Mr. BREAUX. Mr. President, I will be relatively brief and make a few comments on the pending cable bill that is before the Senate.

I was interested in the comments of the previous speaker, the Senator from California, on retransmission consent, which is contained in the pending legislation. It really presents a very interesting problem, and I think we ought to spend a little bit of time thinking about it and trying to figure out how we are going to work our way out of what I think is an apparent dilemma we are creating for ourselves.

The legislation essentially says that a cable company now must negotiate with a broadcasting or television station for the right to retransmit the broadcast signal from that television station over their cable system to subscribers around the country and that that cable company can either agree to a must-carry provision, which means they must carry those signals, or they can negotiate and pay the broadcaster for the right or the privilege to, in fact, carry that program. And that means an exchange of some financial consideration from the cable company to the broadcaster for the right to transmit that signal.

The conflict, an apparent conflict, about which I am a little bit concerned, is what happens to the person who actually owns the program, the programmer in this case who creates the product, who creates the show, who creates the idea and turns it into a marketable product which they sell to the broadcast stations or to the networks. It seems to me we ought to be very careful, and that we product the rights of the person who owns the property to also be properly compensated for the resale of that product.

I am a little concerned that under existing provisions we prohibit the cable companies or the programmers from negotiating for retransmission over cable systems of their product. But now we are specifically saying that the broadcaster can get paid by the cable company, that the programmer cannot be paid by the cable company for broadcasting that signal.

I think we have a conflict there, and I am not sure how to resolve it. I think perhaps the Judiciary Committee under the copyright laws can be taking a look at the conflict that I think we are presenting ourselves.

If I were a programmer and I owned the product, and I sold it to a network, I would expect to get compensated for it, and they do. But can I as an owner of that program get compensated by somebody else who uses that program, for instance the cable operators? That is where the conflict is.

Perhaps programmers will be able to take into consideration if they sell a program to NBC, just for example, that NBC will also be selling it to the cable operator; therefore, my product is more valuable to the network and therefore you ought to pay me more because I know you are going to get paid again by the cable operators when they buy your product. Maybe that is one way to resolve this situation without trying to pass a bunch of laws to take care of it.

Perhaps there may be some who would advocate that the cable owners should not only negotiate with the broadcaster but would also have to negotiate with the programmer. I think that is probably a little bit more complicated than it needs to be.

But there is a problem out there. We are creating it through the retransmission that is sent. We are not resolving it. In fact I think we are creating it. That is why I raise this point, because I think perhaps the Judiciary Committee will be looking at this issue under the Copyright Act, and perhaps will recommend a solution to this Congress that will be one that will be fair and just to everybody involved.

I think just one other comment on the entire package. We have all heard comments, really complaints, from many subscribers and cities and counties and, in my case, of course, Louisiana, parishes, because of the treatment that they have received from many cable operators throughout the United States. There is no question that there have been some abuses. There is no question that there have been some overcharges, but I think we as a Congress have to be cautious in coming in and overregulating with a heavy hand an industry that by and large was being received very well by the general public.

It is amazing the growth of the cable industry in this country. The facts indicate that nearly 90 percent of the homes in this country have available to them cable service.

It is an industry that we now see that over 60 percent of American homes actually subscribe to some type of cable service. If it was that bad, if it was that overpriced, if the services were that fraught with mistakes and bad service, I would think that American public would respond by saying we are just not going to accept that type of service. We are not going to pay for it, but really the facts are just the opposite. The American people have enthusiastically continued to subscribe to the cable services, indicating certainly a certain degree of acceptance and in fact support for this industry which is now really looking at potential for overregulation.

I generally support less regulation, not more, and that is one of the reasons why I intend to support the Packwood-Kerry substitute in the way it is presented as I understand it is going to be to the Senate floor. It provides a degree of regulation which is not there now but it does not overregulate. To allow for the regulation of a base of services that subscribers get I think is appropriate. All of these extra things are just that. They are extras. You do not have to have all of the exotic programs that are coming out on the market. If you think they are too expensive you do not need to take those programs. If you think it is a good bargain, then you should have the right to do so.

But the basic tier, the basic networks, and the basic television programs will be brought in the basic tier package will now be regulated under the substitute offered by Senators PACKWOOD and KERRY. I think that is an appropriate and a proper move to try and remedy some of the concerns and the problems that have been presented to us. It certainly is going to make the cable operators and the cable owners have recognition, that being a monopoly in almost all instances, they have a special standard that they have to follow.

Indeed, a limited amount of regulation with regard to the amount of rates that can be charged I think is appropriate and proper. I think to offer do it, to go back to the old days when it was all regulated, when we had problems from overregulation, is a mistake that we should have learned from.

So I would recommend a middle course, a more modest degree of regulation, which I think is contained in the substitute, and I intend to support that substitute when it is presented.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

ORDER OF PROCEDURE

Mr. BUMPERS. Mr. President, I ask unanimous consent that I be permitted to proceed for not to exceed 3 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPERCONDUCTING SUPER COLLIDER AND THE SPACE STATION

Mr. BUMPERS. Mr. President, I rushed over to the floor because I was sitting in my office a moment ago, and I heard the distinguished chairman of the Appropriations Committee say some things that were immensely gratifying to me, namely, that in a perfect world the superconducting super collider and the space station might be highly desirable, but we are not in a perfect world. We are in one where this body is going to be scrounging for money for programs which are absolutely essential to a vibrant democracy, essential to the fairness of the people of the country, and essential to the viability of the economy of this country.

I was absolutely traumatized that the President has asked for 34 percent increase in the superconducting super collider, a 12 percent increase in the space station, and I will just discuss those two, neither of which have a significant payback to the American people, a space station which is going to cost in today's dollars $30 billion, plus $10 billion for associated costs and throw it into space, and at total cost over the 27-year additional life expectancy of $118 billion.

You are not just talking about even $40 billion. You remember it started out at $8 billion at President Reagan's State of the Union Address. We are now up to $40 billion just for the station, and a total of $118 billion; some say $200 billion for the 27-year life of it.

Last year I took that on here and I got 35 votes. And the reason I am so pleased is because I know with the strength and force of the chairman of the Appropriations Committee on my side, and he did not commit to this, but he is certainly learning that way, we may be able to scrub one of the most shameless expenditures of money in the history of the United States.

When it comes to the superconducting super collider we will take that on later also. But the President has asked for about $170 million increase in that, $250 million increase for the space station, headed for God knows where.

So I am just immensely pleased. I sent our colleagues a letter last week, to all of my colleagues, saying without being strident about it, I hope you are not signing any letters signing on to the space station as many people did last year. Incidentally, 13 people, who signed the letter of the Senator from Alabama last year saying we think the space station is the greatest thing since night baseball—13 of them later voted to kill it.

In my opinion, those are two programs that absolutely must go if we are serious about finding money to fund some of the things the President mentioned the other night. I counted up about $100 billion he mentioned. I cannot find anywhere in the budget where it is going to be paid for.

I just came over here to thank my distinguished colleague from West Virginia, the chairman of the Appropriations Committee, for his comments on those items.

I yield the floor.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

S. 12

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

Mr. CRANSTON. Mr. President, regarding the cable legislation pending before the Senate, it contains a provision that is causing great consternation among those who produce much of the programming broadcast by television stations into America's living rooms. Those who invest great sums to produce TV shows and who own the copyright in those shows have raised serious concerns about their rights under the retransmission consent provision of S. 12.

Many copyright owners have asked why S. 12's retransmission provision requires the cable operator to obtain permission to retransmit shows not from the copyright owner but from the broadcaster who is only licensed by the copyright owner to use his show in very limited and specified ways.

I have also been asked how retransmission consent could function alongside the Copyright Act's compulsory license. Today, under the existing compulsory license, a cable operator may retransmit a copyrighted program without the permission of the broadcaster or the copyright owner. It would seem that retransmission consent abrogates the compulsory license.

S. 12, unfortunately, does not clarify this significant question. Other program producers have asked me about existing and future contracts between a copyright owner and broadcaster that expressly bar a broadcaster from granting or denying consent to retransmit a program.

I was glad to see the Commerce Committee report specifically recognize the program owner's right to freely contract for terms surrounding this program. However, how will the cable bill affect an existing or future contract between a retransmission rights we are discussing here today? That is a very important question.

Mr. President, these and other concerns may disrupt the day-to-day operations of producers, if they attempt to reconcile the retransmission consent provisions with aspects of the Copyright Act's compulsory license and contractual agreements between the affected parties.

I understand that the chairman of the Copyright Subcommittee, Senator DECONCINI of Arizona, intends to hold hearings on the compulsory license in March. I have every confidence that if those hearings reveal that some modification of the retransmission consent provisions is necessary, the principals behind S. 12 will ensure that those changes are made. And I look forward to working with them to that end.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that I be permitted to proceed as if in morning business for the duration of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized as if in morning business and the Senator's remarks will appear at the appropriate point in the RECORD.

Mr. LAUTENBERG. I thank the distinguished occupant of the Chair.

(The remarks of Mr. LAUTENBERG pertaining to the introduction of S. 2169 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Who seeks recognition?

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Hawaii.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

THE USE OF PEG CHANNELS FOR THE CARRIAGE OF NONCOMMERCIAL BROADCAST STATIONS UNDER SECTION 615(d)

Mr. GORE. Mr. President, I am concerned about a possible misinterpretation of section 615(d) of S. 12. As the Senator from Hawaii knows, that provision would allow a cable operator to satisfy its obligation to carry a noncommercial educational television signal by placing it on a public, educational, or governmental [PEG] channel not in use for its designated purpose. As the Senator also knows, section 611 of the Cable Communications Policy Act of 1984, 47 U.S.C. 531, grants franchising authorities the right, as part of a franchise, to require that a cable operator establish PEG channels and to establish rules and procedures for the use of such channels. My question is whether a cable operator would be required to obtain the permission of the franchising authority before it could use an unused PEG channel for the carriage of a noncommercial television signal?

Mr. INOUYE. Absolutely. A cable operator's right to use an unused PEG channel to carry a noncommercial television signal still would be subject to the approval or disapproval of a franchising authority. Section 615(d) is not intended to impair the right of a franchising authority under section 611 of the Cable Act to regulate PEG channels. Section 611(d)(1) of the Cable Act is very clear on this point. It recognizes the right of a franchising authority to prescribe "rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated." Section 615 of S. 12 does not impair that authority.

Mr. GORE. Would a franchising authority have the right to require the cable operator to remove the noncommercial television signal after a certain period of time?

Mr. INOUYE. Yes. Section 611(d)(2) of the Cable Act states that a franchising authority may establish rules and procedures under which use of a PEG channel for an undesignated purpose shall cease. Nothing in S. 12 is intended to undermine a franchising authority's rights under section 611(d)(2) or any other provision in section 611. A cable operator would have no right to use, or continue to use, an unused PEG channel to carry a noncommercial television signal pursuant to section 615 of S. 12 if a franchising authority does not approve of such use.

Mr. GORE. Mr. President, I would like to raise an important issue that deserves to be addressed in the near future. This issue concerns the need to create a right of public performance for sound recordings delivered on a subscription basis.

Mr. INOUYE. I am glad the Senator raised this issue. Although the question of compensation for performers and record companies for public performances is not within the jurisdiction of the Commerce Committee and does not fall within the confines of the Communications Act of 1934, this issue has never been more important than now. New digital technologies are emerging that will deliver CD-quality sound over cable wires and via satellite to consumers' homes. The transmission of digital, on-demand sound recordings may reduce consumers' desire to purchase CD's, records, or other recordings.

Under current copyright law, the creators of sound recordings receive compensation for the sale of recordings but are not paid directly for their talent, creativity, and financial investment when their works are performed publicly. If these new digital technologies reduce the demand for the purchase of recordings, they will make it difficult for the performers and producers of sound recordings to benefit from the use of their product. I am concerned that performers and record companies may not realize the financial benefit they deserve from subscription services that deliver their product for payment by the listening public. The United States is virtually alone in the industrialized world in not providing direct compensation to producers and performers for the public performance of their sound recordings. I believe that the rights of American workers need to be protected both in the United States and abroad.

Speaking as a frustrated musician myself, I recognize that the American music industry and its performers have provided the music that not only we but the whole world enjoys. I hope that the parties involved in the question of compensation for creators of sound recordings delivered over digital audio subscription services, both in the Congress and in the industry, can find a way to work out a solution to this problem.

Mr. GORE. I share the concerns of my friend and colleague from Hawaii. In fact, the Copyright Office recently issued a report that also raises concern about this issue. I'm extremely proud of the contributions that my constituents in Tennessee make to American music and I want to ensure that this creative spirit is not stifled and that their livelihoods will be protected in the face of emerging technologies. I hope now that the Copyright Office has issued its report, the Judiciary Committee will take a look at this and that the interested parties will get together to work out a legislative solution to this problem. I look forward to working with my colleague and the members of the Judiciary Committee to achieve these goals.

LOCAL ACCESS TO BROADCAST SIGNALS

Mr. BURDICK. Mr. President, I would like to pose a question to my colleague, the distinguished Senator from Hawaii, the manager of S. 12 on the Democratic side, for the purpose of engaging in a colloquy.

I support this bill because I believe it provides important protections to Americans across the Nation who subscribe to cable television. As reported by the Commerce Committee, the bill's retransmission consent provision will give local broadcast stations the option to negotiate with local cable operators over the terms and conditions of cable carriage of its signal. Concerns have been raised about what will happen if a local station is unable to reach an agreement with the local cable operator, which could result in the loss of local programming to cable subscribers. I am particularly concerned about those consumers who cannot receive all the local broadcast signals without cable. How can we be assured that if retransmission consent negotiations take place, consumers will not lose access to their local programming?

Mr. ADAMS. Mr. President, I too am concerned about this possibility. If a local broadcast station and a cable operator are unable to come to terms on an agreement to carry that station's signal, some consumers may not be able to receive local programming. For example, in parts of Seattle, the signals of local Seattle stations are not viewable if they are not carried on cable, because of interference problems with over-the-air viewing of these signals. How can we be sure that consumers will continue to receive the signals of their local broadcast stations if the local broadcaster and the local cable operator cannot reach agreement on the terms of carriage?

Mr. INOUYE. Mr. President, I thank the Senators for raising this very important concern, inasmuch as universal availability of local broadcast signals is a major goal of this legislation. In the broadcast sense, providing local stations with the ability to negotiate with cable systems and other multichannel providers is a necessary step, we believe, to ensure that local stations remain viable well into the future to continue to provide local service to cable subscribers and nonsubscribers alike.

The must carry and retransmission consent provisions of the bill are intended to promote the availability of local broadcast signals on cable systems. Today, cable subscribers and local stations are totally at the mercy of local cable operators. There presently are absolutely no assurances that any local stations will be carried on a cable system.

The retransmission consent provisions of S. 12 were designed so as to avoid creating a complex set of governmental rules to promote the carriage of local broadcast signals. Instead, S. 12 permits the two interested parties—the station and the cable system—to negotiate concerning their mutual interests. It is of course in their mutual interests that these parties reach an agreement; the broadcaster will want access to the audience served by the cable system, and the cable operator will want the attractive programming that is carried on the broadcast signal.

I believe that instances in which the parties will be unable to reach an agreement will be extremely rare. We should resist the urge to require formal, preestablished mechanisms that might distort the incentives of the marketplace.

At the same time, there may be times when the Government may be of assistance in helping the parties reach an agreement. I am confident, as I believe the other cosponsors of the bill are, that the FCC has the authority under the Communications Act and under the provisions of this bill to address what would be the rare instances in which such carriage agreements are not reached. I believe that the FCC should exercise this authority, when necessary, to help ensure that local broadcast signals are available to all the cable subscribers.

In this regard, the FCC should monitor the workings of this section following its rulemaking implementing the regulations that will govern stations' exercise of retransmission consent so as to identify any such problems. If it identifies such unforeseen instances in which a lack of agreement results in a loss of local programming to viewers, the Commission should take the regulatory steps needed to address the problem.

I assure my friend that my colleagues on the committee and I will make certain that the FCC uses its authority to prevent any such impasses from becoming permanent and frustrating the achievement of our goal to maximize local service to the public.

Mr. BURDICK. Mr. President, I thank my friend and colleague for this clarification.

Mr. ADAMS. Mr. President, I also would like to thank the manager of the bill, Senator INOUYE, for his cogent explanation of this issue.

Mr. WELLSTONE. Mr. President, I am delighted to hear the assurances of Senator INOUYE regarding local access to broadcast signals. I had been considering offering an amendment dealing with this subject. I ask unanimous consent that a copy of that proposed amendment be printed at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 95, between lines 8 and 9, insert the following:

"(C) The regulations required by subparagraph (A) shall ensure that the exercise of the rights to grant retransmission authority under this subsection does not result in—

"(i) the loss of any local broadcast signal carried by a cable operator on the date of the enactment of this subparagraph; and

"(ii) an increase in the rates charged by cable operators.

Mr. WELLSTONE. Mr. President, as a result of the assurances of the Senator from Hawaii, as well as the provisions in the manager's amendment addressing the potential for rate increases due to retransmission consent, I believe the significant public interest aspects of this proposal have been favorably addressed, and I will not offer my amendment at this time.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 1512

(Purpose: To modify the provisions of the bill relating to the requirement to carry local broadcast signals)

Mr. BROWN. Mr. President, I have an amendment that I will send to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 1512.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 103, line 23, immediately after "the", insert "foregoing".

On page 103, after line 24, add the following:

"(g)(1) Notwithstanding any other provision of this Act, the Commission shall, within 18 months following the date of the enactment of this subsection, promulgate regulations, consistent with the requirements of this subsection, authorizing any cable operator to apply for an exemption from the requirements of subsections (a) through (f).

"(2) Regulations required by paragraph (1) of this subsection shall provide that a cable operator for any system be exempt from the requirements of subsections (a) through (f) at such time as, and provided that, such operator establishes, by such means as the Commission shall prescribe, that there is available for use for each television receiver maintained by each subscriber of such operator a device which permits the subscriber to change readily among all video distribution media with no differential in convenience among the video distribution media.

"(3) Regulations pursuant to paragraph (1) shall provide, among other things—

"(A) for exemptions in accordance with this subsection.

"(B) technical and operating requirements for the device referred to in paragraph (2) of this subsection, and

"(C) for implementing the provisions of section 303(s) of this Act.

"(4) Nothing in this subsection shall be construed to require a subscriber of any cable system to acquire any device referred to in paragraph (2), or to prohibit any such subscriber from acquiring any such device from a source other than the cable operator.

"(5) The device referred to in paragraph (2) shall be made available by a cable operator providing cable services to a system to the subscribers of that system at a nominal charge, and as a part of the basic tier of service.

On page 91, line 8, immediately after "switch", insert a comma and the following: "or other comparable device,".

On page 91, line 9, immediately after the comma, insert "with no differential in convenience among the video distribution media,".

Mr. BROWN. Mr. President, I have the deepest respect for the great efforts of the Senators that have brought this bill to the floor. They have taken a tough problem and worked very hard and come up with a solution that goes a long way toward addressing some of the problems in this area. I do believe, though, that the bill continues to have some significant flaws.

Mr. President, my concern is that this bill does not expand competition and avoid some of the flaws that I think it should. That is not in any way to detract from the many good things this bill does. Certainly eliminating the anticompetitive environment that has been allowed to exist in some of our municipalities and States is a major step forward.

Certain aspects of the must-carry provision, I think, go a long way toward preventing monopolistic practices in this area. But I do think there is more that we can do to foster competition and, I think, more that we can do to help consumers in this area.

Instead of providing consumers with the maximum program choices, the bill may have the unintended impact of limiting the choices available to them.

I have four basic concerns with this measure as it has been reported out of the Commerce Committee, each of which impact upon the others.

First, Mr. President, I continue to have deep concerns over the constitutionality of the must-carry provisions for commercial television stations. The committee report on S. 12 acknowledges that the scope of cable television's first amendment rights remains unresolved.

Let us be specific. We know that the FCC must-carry rules have failed twice to pass constitutional scrutiny in the Quincy Cable TV, Inc., and Century Communications Corp. cases. These problems are still with us. Whether they are FCC rules or whether they are statutes, we have to meet the constitutional guidelines. It is an area we should address.

Second, I am concerned that the retransmission rights may either increase the cost of basic cable service or effectively deprive cable subscribers of those stations' programming in the event no retransmission agreement is reached.

Let us be specific. Right now cable companies do, indeed, benefit from having the opportunity to retranscribe, to beam out the signals of existing local stations. This bill makes it possible for them to have to pay for that right. Let us not fool anybody; that is going to mean higher costs to consumers. There is no magic in this. You cannot come up with a paycheck for those broadcasting stations and not have somebody pay for it, and the consumer is the one who is going to get to pay this bill.

It seems the bill violates two of its basic purposes—to lower cable rates and to increase program choices for consumers.

Let me acknowledge here that other provisions of the bill, including some of the rate regulation, may well help control rates in other areas, and I do not want to diminish that effort of the bill's sponsors at all. But there is clearly a contrary impact as well.

Third, Mr. President, I am concerned that the retransmission consent could increase the cost and limit the availability of programming in rural areas via satellite once the sunset provisions of the Satellite Home Viewer Act take effect in 1995.

As an ancillary matter, I might note that retransmission fees are intended to create additional revenues for the television stations. But they do so without permitting the producers of the programming those stations transmit to participate in revenues generated. It is a copyright problem.

Rather, the producers are effectively denied further compensation under the current compulsory copyright provisions of the Copyright Act. This situation is unfair and it undercuts the equities upon which the compulsory copyright is based.

These concerns, however, are best addressed in the context of the upcoming hearings on compulsory copyright laws and, hopefully, the extension of the Satellite Home Viewer Television Act.

Finally, Mr. President, I am concerned that the must-carry provisions for commercial broadcast stations is essentially a mandatory subsidy, the costs of which will be imposed on competing television systems and cable consumers regardless of whether they want the channels which elect must-carry or not. If they are put in the basic package, the cost of paying for those retransmissions are being passed on to people who may or may not want to see those channels or may or may not want to pay for them.

The justification for must-carry offered by the support materials here is that it is necessary in order to provide broadcast stations with access to the viewing public. I personally believe must-carry has great value. If you have a circumstance where a cable company has significant control of a significant portion of the market and a local broadcaster did not have access to that system, it becomes very difficult for them to compete in the local market.

That has led me to the amendment that is before the Senate now. The amendment is pretty basic and pretty simple. It simply says, if you can come up with an easy way, through a remote control device, to switch from the cable system over to your antenna where you get those local stations, that that will provide an exemption for must-carry.

Mr. President, my purpose is very simple. One, I hope we will urge the industry to move forward and develop a device that can be operated by remote control that makes it easy to switch out of the cable mode and over to your antenna. That solves some of this sticky problem. And it promotes competition. That is what this amendment is all about.

If a device of this type cannot be developed—and the FCC is given prerogative here to help develop the rules—if a device of this kind cannot be developed, nothing is lost, the must-carry provisions are still there in the bill. But we should not deny the ability to provide competition. This amendment would provide an incentive for the development of compatible devices to make that switchover. And if we have that in place, it will make a real difference in terms of competition in the marketplace.

Mr. President, I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1513 TO AMENDMENT NO. 1512

(Purpose: To protect children from indecent cable programming on leased access channels)

Mr. HELMS. Mr. President, I send a second-degree amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1513 to amendment No. 1512.

Mr. HELMS. Mr. President, in this instance I am going to ask the clerk to read all of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant legislative clerk proceeded to read the amendment.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following new section:

CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

SEC. . (a) Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)), is amended by:

(1) inserting after the words "franchising authority", the words "or the cable operator," and

(2) inserting immediately after the period at the end thereof the following:

"This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) Section 612 of the Communications Act of 1934 (47 U.S.C. 532), is amended by inserting at the end the following new subsection:

"(l)(1) Within 120 days days following the date of the enactment of this subsection, the Federal Communications Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Federal Communications Commission regulations and which cable operators have not voluntarily prohibited under subsection (h) of this section, by:

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section, and

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing, and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Federal Communications Commission regulations."

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).".

Mr. HELMS. Mr. President, after consulting with the distinguished manager of the bill, I believe I am going to withdraw it, temporarily.

The PRESIDING OFFICER. The Senator may withdraw his amendment.

The amendment (No. 1513) was withdrawn.

Mr. INOUYE. What is the pending business, Mr. President?

The PRESIDING OFFICER. The Brown amendment, No. 1512.

Mr. INOUYE. Mr. President, may I be recognized to speak against the Brown amendment?

The PRESIDING OFFICER. The Senator is recognized.

Mr. INOUYE. Mr. President, for the past 2 days we have been considering S. 12. Throughout the debate we found the broadcasters on one side and cable television operators on the other side. However, on this amendment, the National Association of Broadcasters, the National Cable Television Association, and the Community Antenna TV Association, are jointly opposed to this Brown amendment.

This amendment at first blush would seem reasonable and desirable. But we have been advised that to install this in the proper fashion would cost consumers about $1.5 billion.

Second, at the present time there are cable subscribers who have these switches, but they do not work.

Third, over three-quarters of all the cable subscribers in the United States have no antennas, because it is all cable. So they have done away with the antenna.

That being the case, and the costs involved, I think all of us would have to oppose this. It may interest the Senate that, at this time, 6 percent of cable households are reported to have ever used the A/B switch, and those who have used it have discontinued it immediately because it just does not work.

I would hope that as a result of this colloquy with the distinguished Senator from Colorado, industry will make a special effort to come up with a switch that will work. And I hope the time will come when, Mr. President, you and I can be watching a ballgame and suddenly find it blacked out and we can go to our remote switch and get it from over-the-air, free television. Today you cannot do that.

So the Brown amendment has great merit and I am certain America would support this. But at the present time, with the cost of $1.5 billion and the technology being such it will not work, reluctantly the managers will have to oppose this amendment.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I totally concur with the comments of Senator INOUYE. I, of course, have the highest regard for Senator BROWN and any proposal he puts forward deserves the careful consideration of the Senate and the careful consideration of this Senator. I appreciate the seriousness of putting this proposal forward, but for the reasons stated by the Senator from Hawaii, I, too, will have to oppose it.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, let me express my thanks to the distinguished Senator from Hawaii and the distinguished Senator from Missouri for the kindness of their remarks, although the conclusion I had hoped might come out differently. Let me simply, for the record, make several observations.

One is that this is not the old A/B switch which was tried. This contemplates a new device. Second, what is contemplated here is not mandatory, so it is not a requirement to come up with $1 or $1.5 billion that might have applied to the old systems. Third, the burden is indeed on cable companies, not on others here. And, fourth, that this is simply an option that is not required. Indeed, if the devices are not sound or if they are too expensive, there is no requirement to move ahead with them.

But it does provide an option that, if developed, could well be of assistance in promoting competition here. It seems to me it is a mistake to rule out the option that this technology can and will be developed.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1512) was rejected.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1514

(Purpose: To protect children from indecent cable programming on leased access channels)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1514.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following new section:

CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

SEC. . (a) Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)), is amended by:

(1) inserting after the words "franchising authority", the words "or the cable operator", and

(2) inserting immediately after the period at the end thereof the following:

"This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) Section 612 of the Communications Act of 1934 (47 U.S.C. 532), is amended by inserting at the end the following new subsection:

"(i)(1) Within 120 days following the date of the enactment of this subsection, the Federal Communications Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Federal Communications Commission regulations and which cable operators have not voluntarily prohibited under subsection (h) of this section, by:

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section, and

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing, and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Federal Communications Commission regulations."

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).".

Mr. HELMS. Mr. President, the amendment at the desk will forbid cable companies from inflicting their unsuspecting subscribers with sexually explicit programs on leased access channels.

Under my amendment, cable operators have the right to reject such filthy programming, and if they do not reject it, consumers have the right to reject such programming from being fed into their homes. The pending amendment requires the blocking of sexually explicit leased access channels precisely as Congress has already required telephone companies to block so-called dial-a-porn lines. It is interesting, certainly to me and millions of others, that this past Monday the Supreme Court upheld the dial-a-porn law which I offered in the Senate in 1989.

Mr. President, leased access channels are not pay channels, they are often in the basic cable package. These channels are similar to public access channels, except that advertising can be purchased on leased access channels.

The problem is that cable companies are required by law to carry, on leased access channels, any and every program that comes along—no matter how offensive and disgusting. The end result is perverted and disgusting programs mixed with religious and health shows.

These leased access channels were intended to promote diversity, but instead they promote perversity. For example, the Playboy channel made its way onto a leased access channel in Puerto Rico. Imagine, the Playboy channel on a regular leased access channel. I cannot imagine it, but it happened.

The situation is likewise out of hand in New York and other States. One program on a leased access channel in New York depicts men and women stripping completely nude. This was described as the "best strip show in town" in a sort of perverted review in one of the publications in New York. Another leased access channel is laden with explicit sex ads: these sex ads are sickenly perverse: They promote incest, beastiality, even rape. Another program featured people performing oral sex.

I have at hand, a letter from an outraged mother named Madelon, who accidentally saw this program. Here is what she said:

> Words cannot describe the outrage I felt when I found myself watching on cable TV a couple engaging in oral sex. I phoned the Manhatten Cable to complain and was told that I was receiving Channel J, which is a leased access channel. I feel as though my daughter and I are subject to verbal and visual violation just by accidentally pushing the wrong button. * * * It's sleaze; it's smut, and I don't want it!

Mr. President, this type of programming is spreading across the country. We have received reports of filthy, disgusting programming from California to my State of North Carolina. I was reminded this morning of a report from Austin, TX, that they, too, have had problems, and I do mean problems, with public access channels. The headline says, "Mayor Protests Strip Act on ACTV."

This lady, Madelon, is absolutely right. She said it has to stop, and I agree with her. It is a travesty that existing law requires cable operators to carry this sort of garbage, and that is why I have sent this amendment to the desk.

Let me summarize. First, the pending amendment will allow a cable company to decline to carry on leased access channels programs that "describe or depict sexual or excretory activities or organs in a patently offensive manner."

Why did I include that? This definition is exactly the same as the FCC definition which was upheld by the Supreme Court on two occasions, most recently this past Monday. This amendment simply gives the cable operator the right to reject such material.

Mr. President, there is no constitutional problem with this amendment because this is not governmental action. It is an action taken by a private party.

The pending amendment merely gives cable operators the legal right to make that decision. The amendment doe not require cable operators to do anything. Therefore, let me say it again, this amendment does not in any way propose censorship.

The courts have ruled that it is permissible to allow a private company to make independent decisions to exclude certain objectionable material. *Carlin Comm. v. The Mountain States Tel. and Telegraph Co.*, 827 F2d 1291 (9th Cir.) and *Carlin Comm. v. Southern Bell*, 802 F.2d 1352 (11th Cir. 1986).)

The second part of the pending amendment, Mr. President, requires FCC to set rules, (A) to place all sexually explicit programs onto a single leased access channel and, (B) to block this segregated channel unless a subscriber requests in writing such channel to be unblocked.

This is precisely the same method that Congress used to block dial-a-porn lines. And, as I said earlier, this past Monday the Supreme Court upheld that law which originated in the Senate of the United States and it was authored by this Senator. It validated this method.

Therefore, there is no question about the constitutionality of this approach. The Supreme Court has ruled, on an amendment similar to the pending amendment, that it is permissible to block telephone lines that carry such sexually explicit material.

Surely from the pornographic community, we are going to hear the claims that we always hear. They made it against my dial-a-porn amendment. For example, they said the term "indecency" is too vague. They said that mandatory blocking was too tough.

And, third, they said this is unconstitutional prior restraint.

All of the above are false. None of the above is accurate. And I suggest that any doubters read the second circuit court case which was upheld by the Supreme Court this past Monday. (*Dial Information Services v. Thornburg*, 938 F.2d 1535 (2d Cir. 1991).) Each one of those objections is refuted by the excellent opinion of the second circuit court.

Just for the record, let me state what the Supreme Court said about the definition of indecency, which is in this amendment and which was in my dial-a-porn amendment. The Supreme Court said this definition is not unconstitutional. As a matter of fact, the Court said "indecent, as used in the Helms amendment, has been defined clearly by the Federal Communication Commission. * * * Accordingly, the term indecent as used in the Helms amendment is sufficiently defined to provide guidance to 'the person of ordinary intelligence in the conduct of this affairs.'" (938 F.2d at 1540–41.)

Second, the Court said that mandatory blocking, which is in this amendment, is constitutional and far more effective than voluntary blocking. Let me quote the Court again with respect to dial-a-porn. "It seems to us that voluntary blocking would not even come close to eliminating as much as the access of children to dial-a-porn as would mandatory blocking." (938 F.2d at 1542.)

The Court then made an excellent point, and I again quote the Court because the two amendments, the dial-a-porn and this one, are analogous. The Court said: "A child may have suffered serious psychological damage from contact with dial-a-porn before the child's parents even became aware from a monthly telephone bill there has been access to an indecent message." Then the Court continued: "It always is more effective to lock the barn before the horse is stolen." (98 F.2d at 1542.)

Finally, the second circuit court held that this approach is not prior restraint of speech. The Court said: "There is no restraint of any kind on adults who seek access to dial-a-porn. A requirement that one desiring access make an advance request therefore simply does not constitute a prior restraint," said the U.S. Supreme Court. (938 F.2d at 1543.)

Mr. President, the bottom line is that this amendment will keep decent Americans from being victimized by the disgusting programs, and the strip shows, and all the rest the sleaze that runs on leased access channels.

Mr. President, I ask unanimous consent that Senator THURMOND and Senator COATS be identified as a principal cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that certain letters be printed in the RECORD, which support the constitutionality of this amendment. These letters are from knowledgeable and experienced scholars.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

GREAT FALLS, VA, *January 29, 1992.*

Senator JESSE A. HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: This letter responds to your request regarding the constitutionality of an amendment to 47 U.S. Code 532(h). In part the amendment would provide:

"This provision permits a cable operator to enforce prospectively a written and published policy of prohibiting programming that it reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

The authorization proposed by the amendment would pass constitutional muster under the First Amendment. The independent judgement of a private cable operator to exclude programming does not entail government action subject to the restraints of the Amendment. See e.g., *Carlin Communications, Inc.* v. *The Mountain States Telephone and Telegraph Company*, 827 F. 2d 1291 (9th Cir. 1987). In addition, the legitimate government interest in morality justifies confining the scope of the cable operator's discretion to the portrayal or presentation of sexual organs or sexual acts that may be patently offensive to the local community. See *Barnes* v. *Glenn Theatres, Inc.*, 111 S. Ct. 2456 (1991).

Nothing in the proposed amendment would permit a cable operator to decline to carry programming that conveyed ideas regarding sex communicated in a way that was not patently offensive to the community because of its portrayal or presentation of sexual organs or sexual acts.

The amendment would also require cable operators to block commercial channels that carry indecent programming, as identified by the programmer, absent a written customer request for access. That provision raises no constitutional difficulties.

Indecency is a legal term of art specifically defined by the Supreme Court and the Federal Communications Commission by regulation that forecloses any vagueness challenge. *FCC* v. *Pacific Foundation*, 438 US 726(1978); *Dial Information Services Corp. of New York* v. *Thornburgh*, 938 F.2d 1535(2nd.Cir.1991).

Further, there is no constitutional mischief in requiring an affirmative adult request before access to indecent material is provided to the subscriber. The government enjoys a compelling interest both in protecting minors from moral and other harms threatened by indecent communications, see *Dial Information*, supra, and in protecting the privacy of the home from unrequested commercial programming, see *Breard* v. *City of Alexandria*, 341 US 622(1951)(upholding ordinance prohibiting home sales of magazines absent customer request).

Finally, offering cable operators or subscribers greater control over erotic or sexually explicit materials than over theatrical productions of the Lincoln—Douglas debate creates no constitutionally invidious classification. See *Rowan* v. *Post Office Dept.*, 397 US 728 (1970).

Sincerely,

BRUCE FEIN,
Attorney at Law.

MORALITY IN MEDIA, INC.,
New York, NY, January 27, 1992.

Hon. JESSE HELMS,
Senate Dirksen Office Building, Washington, DC.

DEAR MR. PHILLIPS: Enclosed are the promised materials concerning the problem of pornographic programming on Congressionally created and regulated public and leased access channels.

As I mentioned on the phone, Federal Law currently prohibits the transmission of obscene matter on cable television [18 U.S.C. 1468; 47 U.S.C. 559].

Section 558 of Title 47, however, also exempts cable operators from criminal liability under the Federal Obscenity Laws for any programming carried on "public access" channels [47 U.S.C. 531] and "leased access" channels [47 U.S.C. 532]. The reason for this exemption if found in Subsection 531(e) and 532(c)(2) of Title 47. These Subsections prohibit operators from exercising "any editorial control" over programming on public or leased access channels.

There are provisions in the current law which were meant to deal with the problem of obscene programming on public and leased access channels, but these provisions have been ineffective. Subsection 544(d) of Title 47, which applys to both public and leased access channels, authorizes a franchising authority and cable operator to specify in a franchise or renewal thereof, that:

"Certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or otherwise unprotected by the Constitution."

In addition, Subsection 532(h), which applys to "leased access" channels, states:

"Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States."

These provisions [Subsection 544(d) and 532(h)] were specifically designed by Congress to ensure that the Cable Communications Policy Act of 1984 would not loosen control of pornographic content transmitted over cable TV. When the Cable Communications Policy Act of 1984 was pending, columnist Jack Anderson complained that the Cable Act would permit pornographic programming on cable. On May 10, 1984 Representatives Bliley and Wirth wrote to every member of Congress to refute this charge. They said in pertinent part as follows:

"In his letter, Mr. Anderson states that HR 4103, "The Cable Telecommunications Act of 1984," will loosen control of pornographic content transmitted over cable T.V. We have no idea where he got this false impression, but as the author and original cosponsor of HR 4103, we can assure you that this legislation not only protects the public against dissemination of obscene material over cable systems, but in fact strengthens the existing state of the law with respect to such programming.

"The legislative history surrounding this issue provides some useful insight which underscores how this legislation address[es] this problem.

"When the Telecommunications Subcommittee marked up the Cable legislation last November, Rep. Tom Tauke pointed out that the legislation might not contain anti-pornography protections with respect to so-called leased access channels—a form of access channel which is not specifically provided in the Senate Bill.

"To remedy the potential problem Congressman Tauke identified, his amendment was agreed to which vested in the hands of the local officials the authority to also assure that no obscene programming would be offered over leased access channels. . . ."

As stated above, however, these "anti-pornography protections" have not worked. The Franchising Authority in New York City recently refused to include a provision in franchises to prohibit obscene programming on public or leased access channels [see enclosed materials]. The United States Attorney's Office in Manhattan has also refused to enforce the Federal Obscenity Laws against the cable providers on these channels.

But even in communities where the Franchising Authorities are willing to exercise their authority over obscene programming, there are difficulties. In the first place, administrative agencies cannot make final determinations about obscene material. Provision must be made for prompt judicial review. Nor may Congress require cable operators to serve as "involuntary governmental surrogates" without proper procedural safeguards. See *Midwest Video Corp.* v. *FCC*, 571 F.2d 1025 (8th Cir. 1978), aff'd, 47 LW 3335 (U.S. 1979). In the second place, it is doubtful whether government may bar cable service from a cable system on the grounds that obscene matter has been transmitted. *See, City of Paducah* v. *Investment Entertainment, Inc.*, 39 Cr.L. 2237 (6th Cir. 1986), cert. den., 55 L.W. 3277 (U.S. 1986).

In the third place, programming can be pornographic or "indecent" without being "obscene" within the three-part *Miller* v. *California* test. Nude talk shows and "nude dancing" which do not depict "hard core" sexual conduct are "indecent" but not obscene. Live or recorded programs which include scenes depicting lewd exhibition of the genitals, masturbation, vaginal intercourse, sodomy or oral sex, but which, when taken as a whole, have serious value, are "indecent" but not obscene. Society may have to put up with such material in a so-called "adult entertainment establishment," but families and decent Americans should not be forced by Congress to open their homes to such material simply because they choose to have cable television installed.

In 1987 the United States Supreme Court summarily affirmed a decision of the Tenth Circuit Court of Appeals which invalidated the Utah Cable Television Programming Decency Act. See *Wilkinson* v. *Community Television*, 800 F.2d 989 (10th Cir. 1986), aff'd without opinion, 55 LW 3643 (U.S. 1987). It is the opinion of Morality in Media that the Supreme Court's summary affirmance in *Wilkinson* does not foreclose the Court itself or lower courts from addressing in a future case the validity of carefully constructed cable TV indecency legislation. See attached analysis in April 1987 Obscenity Law Bulletin.

Be that as it may, very few if any Franchising Authorities are willing at this time to tackle the problem of indecent programming on cable TV—despite provisions in the Cable Act which directly or arguably address the problem of indecent programming on public and leased access channels. See Subsection 532(h) of Title 47 [specifically includes the word "indecent"] and Subsection 544(d) of Title 47 [contains the phrase "or otherwise unprotected by the constitution"]. On cable channels other than public or leased access channels, cable operators can refuse to contract with providers of indecent programming. But on public or leased access channels, which at least in Manhattan are part of "basic cable service," operators are forbidden by Congress from exercising "editorial control."

Congress undoubtedly meant well in requiring cable operators to operate public and leased access channels as a public forum open to any and all speakers. Even in a "traditional public forum" [e.g., a public street], however, public decency and harmful to minors display laws apply. How much more so when the privacy of the home is at stake. See *Frisby* v. *Schultz*, 56 LW 4785, at 4788 (U.S. 1988); *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978).

If Congress is serious about correcting abuses in the provision of cable television programming, it cannot continue to ignore the problem of pornographic programming on public and leased access channels. In many parts of the country these channels have become little more than pornographic sewers. Either the public and leased access channels should be done away with, or cable operators must be permitted to exercise some measure of control over programming on these channels.

The experience of the telephone companies in regard to "dial-in-services" could be helpful. Generally speaking, a phone company must offer its services to all persons without discrimination. The U.S. Court of Appeals for the Ninth Circuit nevertheless held that a telephone company can exercise some business judgment about what messages, even presumptively lawful ones, it will carry. See *Mountain States Telephone* v. *Carlin Communications*, 827 F.2d 1291 (1987), rev. den., 56 LW 3737 (U.S. 1988). Similarly, in *Carlin Communications, Inc.* v. *Southern Bell*, 802 F.2d 1352 (11th Cir. 1986), the Eleventh Circuit held that a telephone company motivated by a desire to protect its own corporate image could refuse to carry dial-a-porn services.

As noted in the *Mountain States Telephone* case, "the principle of nondiscrimination does not preclude distinctions based on reasonable business classifications." *Id.*, at 827 F.2d 1293. Nor would an amendment to Sections 531 and 532 of Title 47, which would restore to cable operators some freedom to choose the content of cable operators some freedom to choose the content of cable services with which their name and reputation will be associated, constitute state action. *Southern Bell*, at 802 F.2d 1361.

Lastly, cable operators would still be exempt from obscenity liability pursuant to 47 U.S.C. 558. *Playboy Enterprises* v. *Public Service Com'n*, 906 F.2d 25 (1st Cir. 1990), cert den., 59 LW 3344 (U.S. 1990).

Sincerely,

ROBERT PETERS,
Attorney.

Mr. THURMOND. I rise in strong support of the important amendment offered by my colleague from North Carolina, Senator HELMS. I support S. 12, the underlying measure, and believe the Helms amendment is a valuable addition to the bill.

This amendment ensures that cable subscribers will not be bombarded in the privacy of their home by unsolicited pornographic programs on leased public access TV channels. This amendment gives cable operators the right to reject sexually explicit programming on leased public access channels. If they choose to accept such programming, this amendment allows consumers to block the channel.

This amendment deals with leased access channels—not pay premium channels like HBO and Showtime. Leased access channels are part of the basic cable package that every subscriber gets when they have cable television installed. These channels are similar to public access channels—anybody and everybody can get their program on the air as long as they pay for their time slot. Independent producers rent TV time from the cable companies and then sell commercial time to support their shows.

The problem is that cable companies are required by current law to carry on these leased channels any program that may come along. Current law forbids cable companies from exercising editorial control on program content. While the underlying theory of leased access channels was to provide a forum for people to speak out on a diversity of issues, these channels are slowly becoming public porn channels. For example, I understand that the Playboy channel was on Puerto Rico's leased access channel. In New York, a leased public access channel contained porn shows with ads for phone lines that promised to let listeners eavesdrop on acts of incest. It also had numerous sex shows and X-rated previews of hard-core homosexual films. It is truly disturbing that cable companies are forced to give such programs a public forum and that cable subscribers must accept this porn as part of basic cable. Remember, these programs are appearing on leased public channels. They are not pay channels.

Mr. President, this amendment permits a cable company to decline to carry on leased access channels programs which are patently offensive because of their presentation of sex acts. This does not create a constitutional problem because Government action is not involved when a private cable company chooses to deny such an indecent program access. Federal courts have already ruled that it is permissible to allow a private compny to make an independent decision which excludes certain objectionable programming. In fact, it is done on network and local television every day.

Second, this important amendment requires the FCC to establish rules for cable operators so that all indecent sexually explicit programs are segregated onto a single leased access channel. The amendment requires that this segregated channel be blocked unless a subscriber requests that the channel be unlocked. This is similar to the manner in which dial-a-porn lines are regulated.

Mr. President, although a few self-interested smut peddlers will cry foul claiming that this amendment violates the first amendment, I believe it passes constitutional muster. Other critics of this amendment may claim that by simply turning the channel, opponents of pornography on public channels can avoid sexcually explicit programming. Yet, this ignores the fact that this pornography is entering the privacy of another's home completely unsolicited. Furthermore, children cannot be monitored every minute of the day. Simply instructing children not to watch certain programs does not solve the problem.

It is time that the Federal Government stops facilitating the spread of explicit pornography for profit. Such offensive material exploits women and children and desensitizes our Nation to the pain of sexual abuse.

For these reasons, I urge my colleagues to support this important amendment.

Mr. COATS. Mr. President, on Monday, the Supreme Court upheld an important principle in our fight to protect our children from the assault of sexual obscenity.

Companies marketing sexually explicit material should not have unhindered access to our children through the telephone lines.

In refusing to review Dial Information Services Corporation of New York versus Barr, the Supreme Court has given parents greater ability to protect their homes and their childrens' environment.

The fundamental principle of the dial-a-porn legislation which I coauthored with the Senator from North Carolina is this: Unless a household specifically requests such services, companies have no right to invade our households with pornography.

This is the same principle for which the Senator from North Carolina fights today.

In New York City, leased access cable provides the following programming:

A program which news article described as "The Best Strip Joint in Town".

X-rated previews of gay films.

One New Yorker wrote to his cable provider, "I want to bring to your attention the homosexual program aired last Friday night. Are you crazy? Beyond mere homosexual pornography, this program showed blatant sexual abuse and what could be classified as rape. Have you no concern for the social, let alone moral, consequences of such programming?"

It is no secret that early and sustained exposure to hard core pornography can result in significant physical, psychological, and social damage to a child.

In addition, indiscriminate viewing of pornography is directly linked to child victimization.

A recent report by the Los Angeles Police Department states:

> Members of the sexually exploited child unit of the Los Angeles Police Department have long known that pornography is often employed by offenders in the extrafamilial sexual victimization of children. In the unit's 14-year history, pornography has been documented in case after case.

Dr. Rolf Zillman of Indiana University conducted a study of the effects of pornography on college students. He found that "there can be no doubt that pornography, as a form of primarily male entertainment, promotes the victimization of women in particular." He documented a more lenient view of rape and bestiality among those who had greater exposure to pornography.

I firmly believe that every parent in America has the right to protect his or her children from the hard core pornography which is now carried on the airwaves.

The amendment offered by the Senator from North Carolina simply states that cable companies shall block the material from entering homes, unless that household has specifically consented to receiving it.

Our homes and our children deserve no less.

Mr. INOUYE. Mr. President, will the Senator yield for a question?

Mr. HELMS. You bet.

Mr. INOUYE. The action proposed in your amendment is not mandatory, is it?

Mr. HELMS. That is correct.

Mr. INOUYE. And if a subscriber desires to watch the sexually implicit shows, he may do so.

Mr. HELMS. That is right. He can ask for it.

Mr. INOUYE. So this is not Government censorship.

Mr. HELMS. The Senator is absolutely right, as the Court itself made clear with respect to the dial-a-porn amendment.

Mr. INOUYE. Mr. President, under those circumstances, as manager of the bill on this side, I am pleased to accept the amendment.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, the amendment is acceptable on this side.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair. I thank the managers of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MACK (when his name was called). Present.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. PACKWOOD] is necessarily absent.

The PRESIDING OFFICER (Mr. LIEBERMAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—95

Adams	Danforth	Inouye
Akaka	Daschle	Jeffords
Baucus	DeConcini	Johnston
Bentsen	Dixon	Kassebaum
Biden	Dodd	Kasten
Bingaman	Dole	Kennedy
Bond	Domenici	Kerry
Boren	Durenberger	Kohl
Breaux	Exon	Lautenberg
Brown	Ford	Leahy
Bryan	Fowler	Levin
Bumpers	Garn	Lieberman
Burdick	Glenn	Lott
Burns	Gore	Lugar
Byrd	Gorton	McCain
Chafee	Graham	McConnell
Coats	Gramm	Metzenbaum
Cochran	Grassley	Mikulski
Cohen	Hatch	Mitchell
Conrad	Hatfield	Moynihan
Craig	Heflin	Murkowski
Cranston	Helms	Nickles
D'Amato	Hollings	Nunn
Pell	Sanford	Stevens
Pressler	Sarbanes	Symms
Pryor	Sasser	Thurmond
Reid	Seymour	Wallop
Riegle	Shelby	Warner
Robb	Simon	Wellstone
Rockefeller	Simpson	Wirth
Roth	Smith	Wofford
Rudman	Specter	

NAYS—0

ANSWERED "PRESENT"—1

Mack

NOT VOTING—4

Bradley	Kerrey
Harkin	Packwood

So the amendment (No. 1514) was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia [Mr. FOWLER].

AMENDMENT NO. 1515

(Purpose: To permit a cable operator of a cable system to eliminate certain channel)

Mr. FOWLER. Mr. President, I have an amendment I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

> The Senator from Georgia [Mr. FOWLER] proposes an amendment numbered 1515.

Mr. FOWLER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 116, between lines 14 and 15, insert the following:
>
> SEC. . (a) Within 180 days following the date of the enactment of this section, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct or material soliciting or promoting unlawful conduct.

Mr. FOWLER. Mr. President, I have an amendment that would empower cable operators to prohibit sexually explicit conduct, obscene material as defined under the Federal Communication Commission and the courts, and material soliciting or promoting unlawful conduct that is now programmed and carried through the so-called public access channels. It is my understanding that the cable operators do not have the authority to prohibit such programming, and this amendment would empower them to prohibit it.

As the Presiding Officer knows, in many cities throughout the country, unfortunately, public access channels are now being used, through live television, to basically solicit prostitution through easily discernible shams such as escort services, fantasy parties, where live participants, through two-way conversation through the telephone, are soliciting illegal activities.

This should be stopped, must be stopped, and I think this amendment will empower the cable operators to stop it.

Mr. WIRTH. Mr. President, will the Senator yield?

Mr. FOWLER. I am pleased to yield to the Senator from Colorado.

Mr. WIRTH. Mr. President, I want to associate myself with the comments and ask that I be listed as a cosponsor of the Fowler amendment.

Mr. FOWLER. I am delighted.

Mr. WIRTH. I ask unanimous consent to be considered as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WIRTH. Mr. President, I was the author of the provisions in the 1984 Cable Act, which provide for public access. That, it seemed to us, was an enormously important provision in that bill to make sure that these so-called bottleneck procedures—so that some individual company could not control the bottleneck and not shut out all kinds of public programming, where that is educational or community town meetings and civic city council meetings and so on, was allowed and could have easy access to the cable system.

But, clearly, that has now been abused. Any of us who have been to New York City recently and looked on the television set on the major channel in New York, I think it is a Time-Warner system, will see this is true. Time-Warner has no choice; I mean, they have to provide this kind of access for what essentially has nothing to do with any kind of public interest whatsoever. It is the most prurient and, in fact, in many ways, grossly illegal access one could imagine.

First, they are skirting around a series of first amendment issues. I think the way this amendment has been constructed by Senator FOWLER really has met that problem and met that problem in a very well-crafted fashion.

So I hope that all of us will support the Fowler amendment and give a very clear signal to the cable companies that, in fact, they can police their own systems, which they cannot do now. This is a service not only to the public, but, also, to the cable companies themselves.

I yield the floor and thank you, Mr. President.

Mr. FOWLER. I thank the Senator from Colorado for his usual fine contribution.

The PRESIDING OFFICER. Is there further debate?

The Senator from Hawaii.

Mr. INOUYE. Mr. President, the managers of this bill have had an opportunity to discuss this matter with the author of the amendment and we find that the amendment is acceptable.

The PRESIDING OFFICER. Is there further debate?

The Senator from Missouri, Mr. DANFORTH, is recognized.

Mr. DANFORTH. The amendment is acceptable, Mr. President.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the question is on agreeing to the amendment of the Senator from Georgia [Mr. FOWLER].

The amendment (No. 1515) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote.

Mr. FOWLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Mr. President, I would like to commend my friend from Hawaii, Mr. INOUYE, and his staff for their tireless efforts in drafting comprehensive cable legislation.

There is one area of this legislation that I have been following very closely because of my responsibilities as the chairman of the Judiciary Subcommittee on Patents, Copyrights and Trademarks. The provision of special interest to me is known as "retransmission consent," which would amend the Communications Act of 1934 to permit broadcasters to negotiate with cable systems for the right to carry their signals.

I would like to emphasize that the Senator form Hawaii has not attempted to alter the relationship between the program producers and the cable systems. Cable systems currently gain access to television programming through the cable compulsory license in the Copyright Act of 1976, 17 U.S.C. 111. Senator INOUYE has taken great care to state in the committee report and the bill itself that S. 12 should not be construed to modify the cable compulsory license.

We are currently reviewing the cable compulsory license in my Subcommittee on Copyrights. Last year I, joined by Senator HATCH, the ranking member of the Copyright Subcommittee requested a study of the cable compulsory license from the Registrar of Copyrights, Ralph Oman. We expect to receive the study this February after which we plan to hold a hearing on this issue to examine, among other issues, the practical effect that retransmission consent would have upon the cable compulsory license.

Because of Senator INOUYE's work with and interest in the cable industry, I would like to invite him and his staff to work with my subcommittee on the cable compulsory license issue. While I have no intention of interfering with the progress of S. 12, if our hearing reveals that the cable compulsory license and retransmission consent need to be reconciled, I hope that my friend from Hawaii will assist me in getting a place at the conference table on S. 12 pertaining to the issue of retransmission consent.

I would like to thank my friend from Hawaii and Toni Cooke on his staff for keeping my subcommittee continuously informed of their work in this area of critical importance to my subcommittee.

Mr. President, I would also like to discuss other aspects of the current legislation which I believe would have a negative impact upon the pocketbooks of the Nation's cable television viewers, and particularly the cable customers in my home State of Arizona. As I have indicated many times to my esteemed colleague and friend from Hawaii, Senator INOUYE, limited reregulation of the cable industry may well be a good idea for the country. I believe the current law, which was authored by Senator Goldwater, has greatly improved the quality and availability of both cable and broadcast television programming.

As many of my colleagues have pointed out, local cable regulation from 1972 to 1984 didn't work well. There was little investment in plant and programming. Cable television was the butt of many jokes. Today, the cable industry isn't a joke any longer; it is indeed a strong competitor in the entertainment industry. My friend from Hawaii has presented a very strong case in support of reregulation of rates and other matters, but I am not convinced all of these remedies will benefit my constituents in Arizona. In fact, I tend to believe that the most of tomorrow's cable customers nationwide, and certainly in Arizona, will pay far more for the same programming they receive today.

Mr. President, the Arizona cable customers appear to have greatly profited from cable deregulation. Since 1984, cable customers in Arizona have seen their basic rates remain constant in real dollars. Data from the largest of the cable companies in Arizona show that the basic monthly cable rate for most Arizona cable subscribers was $14.95. Today, it is $19.95, an increase of only 2 percent above inflation. The viewers have 7 new channels while the cost per channel per month has risen a mere 4 cents, from 50 cents to 54 cents. During this same time frame, Dimension Cable has added over 200,000 additional customers, an increase of over 290 percent.

Compared with many other types of information and entertainment options, Arizona cable television seems to me to be a great bargain. Newspaper subscription costs have doubled, movies costs are up 71 percent, and even a Disneyland pass is up one-third.

Mr. President, the cable industry is not perfect. It wasn't before enactment of the Cable Act of 1984, and it won't be perfect in the future whether or not the current version of S. 12 is enacted. I readily concede that the cable industry has its own bad actors who have inflicted extraordinary rate increases on their customers since enactment of the 1984 act. However, the 1984 act didn't cause these rate increases, and I doubt anything we pass will change that.

Mr. President, I strongly support certain provisions in the pending legislation and have even authored similar in previous Congresses. I want a balanced playing field for broadcasters, especially local affiliates and independents. The Senator from Hawaii knows that I have always supported must-carry and introduced a must-carry bill. I also believe that cable companies should at least pay a small fee to broadcasters for compiling their programming for retransmission, but I would also like to take a deeper look at this issue.

Most importantly, I want to protect new entrants into this workplace, like direct broadcasters, multichannel providers and low power broadcasters, from unfair business practices by cable and other producers of programming. In short, I believe the consumer will benefit from as much competition as possible. Therefore, I cannot support the legislation before us.

In conclusion, I thank the distinguished senior Senator from Hawaii [Mr. INOUYE] for his courtesy and look forward to working with him as this measure works its way through the House and conference.

The PRESIDING OFFICER. Is there further debate?

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

Mr. PRYOR. I thank the Chair very much for recognizing me.

Mr. President, I ask unanimous consent that I may speak and proceed as if in morning business for not to exceed 6 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, let me say to the distinguished Presiding Officer, I have talked to the distinguished managers of the legislation before the Senate at this time and they said that it was all right to proceed as if in morning business for a short time.

THE DEFENSE BUDGET

Mr. PRYOR. Mr. President, on Tuesday night the President of the United States talked to the Congress and the American people, and when he got to the part about the defense budget, he said we are going to cut here and we are going to cut there, we are going to cut this weapon, we are going to knock out this base, and then he said, "This deep and no deeper." "This deep and no deeper."

Well, Mr. President, that is the issue which I would like to address for a moment this afternoon, and talk about whether or not there might not be some areas in which we could go just a little bit deeper.

Yesterday, Defense Secretary Cheney and General Colin Powell unveiled, in a 2-hour Pentagon press conference, the details of our new post-cold-war military structure. President Bush has decided it is time to cut some $50 billion out of defense spending.

While these cuts are needed in some areas, the economic results are going to be devastating. Programs are going to be cut, Mr. President, jobs are going to be lost, bases will close, communities will suffer. To be sure, there will be massive readjustments.

Earlier today, the distinguished chairman of the Senate Armed Services Committee, Senator SAM NUNN, of Georgia, spoke about the importance of easing the transition of reducing our military forces. Mr. President, in light of our new military reductions, today I want to appeal to my colleagues and the American public about a disturbing trend from within the Pentagon that, quite simply, just does not make sense.

As our military shrinks and unemployment soars, I feel compelled to reveal yet another Pentagon boondoggle; and that, Mr. President, is our Military Recruitment Program. In the face of spending cuts and criticisms of our Federal hiring practices, the Pentagon continues to spend almost $2 billion a year trying to get people to join the Armed Forces of our country, and, Mr. President, the process has become excessively bureaucratic, with its thousands of offices and tens of thousands of military recruiters. I have with me today a letter from one of my constituents from Beebe, AR, who recently wrote me about this topic. Mr. Grady Starr writes:

> DEAR SENATOR PRYOR: I'm having a real difficult time understanding the leaders of our county wasting thousands of dollars advertising for recruits to the armed services on the one hand, and at the same time the administration encouraging those who are in the armed services to drop out.
>
> I suppose this is another means of fighting the recession. If the services are overstaffed and Congress is sincere in trying to reduce the military, why are they spending millions on advertising, plus keeping a fulltime recruiting service?

That was the question in a letter sent to me from Beebe, AR by Mr. Grady Starr.

In answering Mr. Starr's question, let me say that it is not thousands or even millions of dollars that we spend on recruiting. We actually spend billions of dollars on recruiting, while at the same time, we pay hefty sums to service men and women who promise to drop out of the military. After receiving Grady Starr's letter, my staff put together some interesting figures, which are displayed in the charts I have today. The first chart shows the declining trend in the number of recruits who actually join our Armed Forces for active duty each year. Beginning with 320,000 recruits in fiscal year 1989; and then a sharp decline to 210,000 active duty recruits for the current fiscal year 1992. These figures are indicative of the sizable cutbacks that our military is enduring. However, it is incomprehensible that while the number of incoming recruits dropped by 34 percent since 1989, the total recruitment spending figures have not declined concurrently. Since fiscal year 1989 the year Secretary Cheney proposed the manpower reductions, annual Pentagon spending for the recruiting of active duty troops has hovered around $1.3 billion.

What is truly amazing about these figures, about these declining numbers of new recruits, is that the President's fiscal year 1993 budget request calls not for a decrease, Mr. President, in the number of funds for recruitment, but he actually calls an for increase in the next fiscal year for recruiting funds. Imagine that, Mr. President, an increase in recruiting funds while our military work force is rapidly declining, and while we are asking people, begging people, paying hefty sums to encourage people to leave the military. "This deep and no deeper"? Certainly we can do better.

My second chart shows some very disturbing figures. This chart represents the total DOD spending per active duty recruit. As we can see, between fiscal year 1989 and 1992, the 3 years in which the military is preparing to downsize by 25 percent and the total of incoming recruits declined by 34 percent, the Pentagon increased the amount of money spent on each active duty recruit by 30 percent.

This is hard to believe. In fiscal year 1992, Mr. President, over $6,000 is going to be spent on the recruitment of each individual active duty member who joins our armed services. That represents a figure which is up by 30 percent from the $4,300 spent just 3 years ago, in 1989.

What is going on here? How is this money being spent? We all know, of course, about the extensive advertising campaigns. Every time we turn on the television, pick up a newspaper, listen to the radio, we are bombarded by ads that say: "Be all that you can be." "Aim high." "The Few, the Proud." During the National Football League playoffs this year hardly a commercial break went by without the presence of a military advertisement. Needless to say, it cost, Mr. President, an enormous sum of money to produce and to buy air time during these prime time events. The average cost of a 30-second TV advertisement for the National Football Conference Championship on CBS was $310,000 for each 30 seconds. Our military ran four such advertisements during that particular game.

Mr. President, our performance in Desert Storm, in my opinion, was the ultimate image enhancement program. As a result, thousands of quality young men and women were turned away from recruiting offices that year. So why does this expensive spending campaign continue? Mr. President, it does not make sense.

Unfortunately, the boondoggle of Pentagon recruitment policies involves much more than just the elaborate, unnecessary television ads, those commercials that are produced by New York City advertising agencies. There are numerous magazine and newspaper advertisements; mass mailings that usually end up in the mailboxes all across America, and the trash cans of noninterested citizens. Thousands of Americans today are receiving free T-shirts, posters, coffee cups, and other military paraphernalia, just because they responded to an armed services mailing brochure.

But most important, the Department of Defense maintains a massive recruiting force that includes over 6,000 offices and 23,000 employees for the purpose of recruiting new personnel into our armed services, when at the same time we are offering large bonuses to individuals who leave the military. Of course these tens of thousands of recruiters utilize expense accounts and use taxpayer-bought automobiles. But the recruiters are not at fault. They are merely following orders.

If the President says we have won the cold war, and the Pentagon says we have a new post-cold-war military, then it is time to cool off the high-powered recruiting machine of the Armed Forces. Mr. President, military recruiting practices must be reevaluated, and it can be done without jeopardizing the quality of our Armed Forces.

As the Pentagon shrinks its budget and reduces its manpower, the costly, overstaffed, bloated, recruiting empire of the Armed Forces must be exposed and restructured.

Mr. President, this bureaucratic program is out of touch with the reality of Pentagon cutbacks. President Bush said in the State of the Union Address, once again, that the defense cuts he is proposing are "this deep, and no deeper." So, is all of the fat now trimmed away? Regrettably, Mr. President, these disturbing figures show that we can do a better job. We can cut a little deeper. We can make our military work better. As we downsize our military, we do not need $310,000 TV ads and an oversized recruiting work force. These practices must be stopped.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. PRYOR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1516

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1516.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end insert the following:

SEC. . (1) Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by (a) striking the period and (b) adding at the end the following: "unless the program involves obscene material."

Mr. HELMS. Mr. President, not long ago, Playboy convinced a cable company to put the Playboy channel on a leased access channel. I think I discussed with some thoroughness the problem with leased access channels in a previous amendment which was approved by the Senate, 95 to 0.

Mr. President, Playboy did this so that the cable company would be immune from prosecution for the broadcast of Playboy. It is very clever. Playboy knew that the 1984 Cable Act totally discharges cable operators from liability for programs carried on leased access channels. So they proceeded to abuse the law. No other case can be made for what they did.

Mr. President, the intent of the law, obviously, was to promote diversity in cable programming. The law required cable operators to carry anything that programmers brought along.

So the law, in effect, struck a deal for the cable operators. In exchange for carrying all programming, the law said, we will make sure you are not liable for any programming you carry. This is not only ridiculous, this is dangerous; hence, the pending amendment.

A Federal court even validated this scheme between Playboy and the cable companies. The court said that under the law, this Cable Act preempted State obscenity law and that the Cable Act prohibited the prosecution of cable operators. (*Playboy Enterprises, Inc.* v. *P.S.C. of Puerto Rico*, 698 F. Supp. 401 (D. Puerto Rico 1988).)

This was a loophole that nobody imagined when the 1984 Cable Act was approved by the Congress and signed by the President.

Let me emphasize—and I will say no more about it—it was never the intent of the Congress of the United States to provide a safe harbor for obscenity. The pending amendment states that a cable company will henceforth be held liable if it carries obscene programs on leased access channels. And it will put an end to the kind of things going on in New York and elsewhere.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, as manager of this measure, I have had the opportunity to discuss this amendment with the Senator from North Carolina, and I am prepared to accept it.

Mr. DANFORTH. Mr. President, this amendment is acceptable on this side.

The PRESIDING OFFICER. Hearing no further debate, the question is on agreeing to the amendment offered by the Senator from North Carolina.

The amendment (No. 1516) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, my sincere thanks to the managers of the bill for their courtesy and cooperation.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1517

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration. This amendment is by Senator DECONCINI of Arizona and myself.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND], for himself and Mr. DECONCINI, proposes an amendment numbered 1517.

At the appropriate place in the amendment add the following:

The Congress finds—

That the physical attributes of the broadcast medium are such that it is reasonable to assume that minors are likley to be in the broadcast audience during most of the broadcast day;

Based on contemporary community standards, there is concern over a growing number of television broadcast programs which at times constitute indecency;

There are instances in network broadcast television programming which involve the depiction of sexual activity directly or by innuendo which is patently offensive under contemporary community standards;

Broadcast television programs that depict sexual matters in ways which are obscene, indecent, or profane erode our sense of traditional American values; and

The three major networks have reduced or eliminated their "Standards and Practices" departments which have traditional reviewed programming for objectionable material: Now, therefore, it is the sense of the Congress that the television networks and producers should increase their activity to monitor and remove offensive sexual material from their television broadcast programming.

Mr. THURMOND. Mr. President, I ask unanimous consent that Senator HELMS be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I rise today, along with Senator DECONCINI and Senator HELMS, to offer an amendment the cable bill regarding the removal of offensive sexual material from television broadcasting. This amendment provides that it is the sense of the Congress that television networks and producers should increase their activity to monitor and remove offensive sexual material from their television broadcast programming. It is identical to Senate Joint Resolution 13, which Senator DECONCINI and I introduced last January at the beginning of the 102d Congress.

As I have stated on several occasions, sexually explicit material is growing by leaps and bounds on network television. I have received calls and letters from my constituents who feel the networks have pushed much of their programming beyond what a reasonable viewing audience would find respectable as family entertainment. In view of that concern, and because of the likelihood that minors are in the television viewing audience for most of the broadcast day, we offer this amendment expressing the sense of the Congress that the television networks and producers should increase their activity to monitor and remove offensive sexual material from their television broadcast programming.

Mr. President, it is widely acknowledged that the three major networks have reduced or eliminated their standards and practices departments. These departments have traditionally reviewed programming for objectionable material prior to broadcasting. The standards and practices departments served to defend audience sensibilities, giving due consideration to the composition of the broadcast audience with regard to programming content. Over the years, as these departments have been downsized, objectionable material on television has increased dramatically. Unfortunately, much of this type of programming is viewed as commonplace.

Mr. President, it was not too long ago that the major networks were in competition solely among themselves. With the advent of cable television, pay television, and VCR's, the landscape of broadcast television has been forever changed. Competition for audience share is ferocious among the players in the broadcast medium. The networks are now in the unfortunate position of competing with cable television, music videos, independent stations, and movie rentals which offer a wide variety of programming.

In my view, this type of environment is much of the reason networks choose to air more explicit programs on network television. Lorne Michaels, the well-known executive producer of "Saturday Night Live," was quoted as saying, "My competition isn't the Late Show anymore, it's cable and VCR's." This quote is a good indication that the networks are under a great deal of pressure to appeal by aggressive means to a large viewing audience. All too often, their response is to air programs with sexually explicit material.

Mr. President, I believe there is a quiet majority across our country who have witnessed and been offended at the casual and cavalier manner in which sexual activity is portrayed on network television. What message is this image sending to our young children? Are American teenagers to believe that network television sets the standard for determining proper behavior, and if they do not conform, that they are an oddity? I sincerely hope that is not the case. Yet, we continue to see an unfortunate downward spiral in television programming.

I encourage all of my colleagues to join Senator DECONCINI, Senator HELMS, and myself in passing this amendment. Television is a prevalent fixture in almost every home in America. Along with all the other issues we have been addressing in this cable bill, this body now has an opportunity to send a clear message to the networks that public officials representing families all across America want to see more responsible programming.

Mr. President, I understand that both sides have agreed to accept this amendment.

Mr. INOUYE. Mr. President, I have had the opportunity to consult and discuss this matter with the distinguished Senator from South Carolina. I am prepared to accept it.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, the amendment is acceptable on this side.

The PRESIDING OFFICER. Is there further debate? Hearing no further debate, the question is on agreeing to the amendment of the Senator from South Carolina.

The amendment (No. 1517) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator recognizes the President pro tempore, Mr. BYRD of West Virginia.

PRESIDENT PRO TEMPORE'S ROLE IN SPECIAL INDEPENDENT COUNSEL INVESTIGATION

Mr. BYRD. Mr. President, I have received several communications, written on behalf of reporters and news organizations, which have expressed concern about anticipated subpoenas in the investigation the Senate authorized by Senate Resolution 202 last session. This correspondence presents questions that relate to the role of the President pro tempore under Senate Resolution 202.

Senate Resolution 202 authorizes the appointment of a special independent counsel to conduct an investigation of unauthorized disclosures of nonpublic confidential information from Senate documents in two recent Senate inquiries: The Judiciary Committee's consideration of the nomination of Clarence Thomas to the Supreme Court and the Ethics Committee's inquiry concerning Charles Keating. In accordance with Senate Resolution 202, upon the joint recommendation of the majority leader and the minority leader, I appointed Peter E. Fleming, Jr., to be the special independent counsel, effective January 2, 1992. I would like to take this opportunity to describe, as a general matter, my further role as the President pro tempore under Senate Resolution 202.

Senate Resolution 202 authorizes the use of the Senate's subpoena powers to obtain information needed for this investigation. The Senate delegated to the President pro tempore, acting upon behalf of the Senate, the power to authorize subpoenas at the request of the special independent counsel. This grant of authority to the President pro tempore is similar to the procedure that the Senate has followed in impeachment proceedings on the Senate floor.

Senate Resolution 202 does not give the President pro tempore the power to anticipate, or to rule, on, privileges that may be asserted by witnesses for whom the special independent counsel is requesting subpoenas. The resolution makes clear that, if a witness who has been subpoenaed to appear at a deposition asserts a privilege against responding to a question or producing records, it is the chairman and ranking minority member of the Committee on Rules and Administration, or the full committee if they refer the objection, who rule on the objection in the first instance. Ultimately, the full Senate may consider a recommendation by the Rules Committee to take actions to enforce a subpoena.

The rules of procedure that the Committee on Rules and Administration has adopted for this investigation detail the procedures that will be followed to obtain rulings from the Rules Committee on objections that the special independent counsel determines to contest. It is clear from Senate Resolution 202 and from the procedural rules, that objections are to be ruled upon in a concrete setting, once a witness has asserted a privilege against responding to a particular question or producing a particular document.

The letters to me on behalf of reporters and news organizations assert objections to the use of the Senate's subpoena power to compel information about the identity of reporters' confidential sources. These letters raise important issues. If, at the appropriate time in the future, these issues are presented to the Rules Committee, the committee, and perhaps the Senate, will need to consider them carefully. As one Senator who serves on the Rules Committee, I wish to make clear that, if these questions are brought to the committee, I intend to consider both sides' views with an open mind and with an appreciation for the importance of the questions presented.

Under the Senate's resolution establishing this investigation, however, as I have indicated it is not the President pro tempore's role to anticipate or to rule on matters of privilege, no matter how strongly they are asserted, in the course of authorizing subpoenas. As long as a subpoena requested by the special independent counsel is within the scope of the investigation with which he has been charged and is not otherwise plainly inconsistent with prior determinations of the Senate, it is my responsibility to authorize the issuance of a requested subpoena.

I hope that this explanation of the role of the President pro tempore under Senate Resolution 202, and of the opportunity provided under the resolution and implementing rules for witnesses to raise objections for the Senate's consideration, will be helpful to my colleagues and others who may be interested. The procedure that I have described is intended to preserve the independence that the Senate has vested in the special counsel under this resolution to select the witnesses who should be examined in the course of this investigation, while recognizing the Senate's ultimate responsibility for the use of its subpoena power.

Mr. President, I yield the floor.

S. 12

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, as the Senator from Hawaii, the manager of the bill, knows we have been working since yesterday in connection with three amendments that the Senator from Ohio has intended to offer concerning this bill. One of them has to do with refunds.

I would like to just discuss that one at the moment, because it is my understanding that the Senator from Hawaii, the manager of the bill, is intending to deal with this subject at a later point.

S. 12 gives the FCC the authority to disallow unreasonable cable rate increases. I believe that if the Commission finds that cable subscribers have been paying unreasonable rates, it is only fair that the portion of those rates which are deemed unreasonable be refunded to consumers.

The cable companies are not entitled to keep monopoly revenues which have been declared unreasonable by the appropriate regulatory body.

I was and am prepared to offer an amendment which would give the FCC the authority to order refunds for cable rate overcharges. But it is my understanding that the chairman of the Communications Subcommittee, Senator INOUYE, intends to offer an amendment to the upcoming FCC authorization bill which would allow the Commission to order refunds to cable subscribers who have been subjected to unreasonable rate increases.

Is the Senator from Ohio correct with respect to the intentions of the Senator from Hawaii?

Mr. INOUYE. The Senator from Ohio is correct.

Mr. METZENBAUM. Under those circumstances, assuming that would be adopted, in behalf of the consumers, the FCC would be in a position to order refunds of overcharges made to the subscribers?

Mr. INOUYE. The Senator is correct again.

Mr. METZENBAUM. I thank the Senator from Hawaii. I look forward to working with him on this issue.

Mr. President, the Senator from Ohio has two other amendments, and is trying to work forward to dispose of those two.

But in the interim, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WIRTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WIRTH. Mr. President, we are currently waiting for the agreement on a unanimous-consent request on procedure on S. 12. In the meantime, I wanted just to make a few brief comments on how we got to where we are here, and to include a full and comprehensive statement on S. 12 in the RECORD.

Mr. President, I spoke at some length earlier in the week on the history of the cable legislation and why the cable legislation came about, and what the reasons were for S. 12, the legislation in front of us today.

As I pointed out at that point, this industry has a long history in my State of Colorado. Much of the cable industry began in the Rocky Mountain region because, as you know, the physics of cable signals are that they do not wrap around the Earth, as radio signals do. They just go straight, and you have to pick up the television signal, you have to pick that up and rebroadcast it effectively in straight lines.

That means that it is much more difficult in certain places in the Rocky Mountain valley or in a big city like Manhattan to pick up a cable signal unless you can retransmit it in some way.

Cable television began in rural areas, in sparsely populated areas, and began in areas where it was very difficult because of the shadow of the mountains to receive television signals.

So as a result, many small franchises or small companies began with what was then a kind of antenna television. It was a supplement to over-the-air broadcasting, and a number of small companies grew up. Some of those became larger and larger, and out of that came the fact that Denver, CO, has become, in effect, cable capital of the country, or the cable capital of the world.

Three out of the ten largest companies are based there, and a Time-Warner subsidiary used to be based in Denver before they moved back to Connecticut.

With that history, we have always had a deep involvement with this industry, which has grown up in a very generous way to the city of Denver and to the State of Colorado. There are now approximately 10,000 people directly and indirectly employed in the cable television industry, and obviously the spinoff from that in my State is very important, very important for employment and the economic base. And also, as I pointed out earlier, a point of real price is cable has begun to reach the promise that many of us felt the cable television industry had.

For a long time in the 1970's, as this infant industry was growing up, there were a lot of other people who wanted, as always is the case in the telecommunications world, to protect themselves from inroads of any new competitor. If you look back, even before the Communications Act of 1934 was originally written, you can see all of the people who had a leg into the communications world were trying to keep everybody else out.

Each industry has done that pretty effectively. History is replete with examples of that. For example, AM radio; the first on-the-radio band worked assiduously to keep out FM radio so that FM radio would not compete. And ultimately, the Congress had to enact legislation to require radios, for example, to have an FM dial on them so that, in fact, for the people who had radio, broadcasting on the FM frequency would be able to be received in the home. AM broadcasters had a lock on it.

The same thing happened with the advent of television, the people who began it. The first televisions were VHF signals, channels 2 through 13. While VHF television was going on, there were other people saying: We can use a higher frequency, ultrahigh frequency. And that is above channel 15 on the dial. To make sure that those who wanted to get in, the UHF people could not get in, the television people effectively controlled the television set market, and you could only buy television sets that got channels 2 through 13.

So the Government once more had to intervene and to say to the television industry: We want this to be more competitive. Let us allow UHF to get in, as well. And we required that television sets be built that had not only the VHF dial on them, but UHF as well. And all of us now know that is a standard in American communication history of the industries keeping the others out. That has always happened.

It certainly was true with the cable television industry. For 20 years, those in the broadcasting industry saw the threat of competition coming from cable television, and through the FCC and through various legislative activities, they were able to really muffle the potential of cable television, cable television which then wanted to become more than just a retransmittal of what was a television signal, but began to think about getting into programming on its own.

There were early ventures into that. Ted Turner and the super station, coming out of Atlanta; the Chicago Tribune, with their super television station in Chicago, began to use satellites and beamed down to local communities. And it became clear that there was emerging the potential for competition for over-the-air broadcasting.

So the broadcasters, doing what has happened in this industry for a long time, went to the FCC, went to all their friends in Congress, built a lot of barriers around cable so cable could not get in; the behavior of VHF to UHF; the behavior of AM radio to FM radio. That has been standard.

We have seen the same thing in the telephone world, keeping out long-distance competition. First, long-distance competitors were around, MCI and others, the AT&T fought like crazy to keep competition out. That has been a standard, to keep the new person out.

Enter the Congress in the late seventies. We began becoming involved in this, figuring how do we unleash this new potential. The first thing we did was the pole attachment bill in the late seventies, which allowed cable television, at a reasonable rate, to string their lines, string their cables on telephone poles, so that the telephone industry could not charge excessive rates, and therefore keep the cable television from being able to string their wires in the community.

Then, ultimately, the Cable Act of 1984, which effectively knocked down the barriers—most of the barriers, if not all the barriers—to the entry of cable television into the communications marketplace.

And that legislation, which became law in 1984, was really, in many ways, very important to the cable community. It did what it was intended to do. It allowed the cable television industry to expand and gave them a financial base and a certain amount of financial stability, and allowed cable television to really move into a kind of maturity and begin to exercise and realize its potential.

When that happened, the number of households subscribing doubled. There are now about 60 million American households subscribing to cable television. That practically doubled. The number of channels have increased very dramatically, and cable television is now providing a wealth of programming, ranging from ESPN, and we are looking at other kinds of sporting channels; and CNN, where we all saw what happened in Japan with the President, and all of us watched what happened in the Middle East.

Children's programming is on cable television. Outside of Sesame Street, on commerical broadcasting there is no commitment at all to children's television. I made that point earlier this week. Cable has picked up a great number of these responsibilities and has really grown into a kind of maturity, offering science, educational programming, children's programming, a vast array of programming related to sporting events, a lot of new entertainment programming, and so on. So cable is really moving out very dramatically.

Now we are at a point where we are debating S. 12, which threatens to reverse a great deal of the progress that has been made in the area of cable television. Sometime later this afternoon, or early tomorrow morning, Senator PACKWOOD, or some of us on behalf of Senator PACKWOOD, will lay down a substitute to S. 12, and we will get into a full debate about what that does and why that substitute is more agreeable, why that substitute is more realistic, and why that substitute is much better public policy than that which is found in S. 12.

I will not get into that at this point, Mr. President. I only wanted to set the stage, set some of the background related to how we got to where we are in cable television. What we are seeing now is that cable television has become a major force. What this debate is really all about is not about rates. Both bills—the basic bill and the substitute—regulate rates. There has been some abuse of that. This legislation, S. 12, this debate, is not about rates. This is not about services. Both S. 12 and the substitute call upon the FCC to set basic standards related to service. They both address rate regulation, and they are the same in service regulation. It is not about the concerns of the broadcasters. Both of them have the same provisions relating to retransmission consent and must-carry.

What is the difference then? In my opinion, the difference is that S. 12 is a frontal attack on the cable television industry. It runs against the grain of copyright issues and creativity, which has characterized the communications industry when it is left alone. It is but another battle in this 50-year industry of parts of the industry attempting to use the legislative process, or the FCC, to limit the new guy on the block. That is what this is all about.

Again, let me repeat that this debate is not about rate regulation. Both the bill, S. 12, and the substitute, call for rate regulation. This debate, Mr. President, is not about service. Both S. 12 and the substitute call upon the FCC to regulate service. This debate is not about retransmission consent and the concerns of broadcasters. The language on retransmission consent and must-carry is the same in S. 12 as in the substitute.

What this debate, then, is all about is those who want to use the political process, as has been done since the beginning of telecommunications, to use the political process to limit one group of people, to keep them out of being able to compete, to keep them out of growing. This has happened over and over and over again. That is what we are seeing here. This happened in the twenties and thirties with radio. This happened at that point when the AM radio people were saying, "We do not want competition from the FM, from the people who have FM stations," and they effectively precluded it, until Congress came in and said, "Allow that competition."

In television the same thing happened. The VHF people kept out the UHF people, and the over-the-air broadcasters did everything they could to keep out cable television. It happened in the common carrier business. AT&T did everything they could to keep out competition in long-distance carriers. It happened in equipment. AT&T, again, through Western Electric, did everything they could to make sure that the only equipment anybody could buy was made by Western Electric. This has been the history of those who have had a piece of telecommunications trying to keep the new individual out. And that is what S. 12 is all about, too.

To repeat, this is not about rate regulation. Both the bill and the substitute have rate regulation. This is not about service. Both the bill and the substitute have regulated service. This is not about retransmission consent and must-carry. Both the bill and the substitute have retransmission and must-carry in them. This is about an attack on the new guy on the block—the cable television industry. That industry—I will argue later and have argued before—has reached too much of its potential, and it has a long way to go and a wonderful future. This is an industry that, through a great deal of investment, has provided CNN. And what S. 12 wants to do is regulate the industry in such a way that it is not going to have the resources to add onto, augment, and make CNN more sophisticated to compete against the evening broadcasters. They do not want that to happen.

This industry is offering children's programming, and the guys on the outside who do not like the fact that the cable television industry is offering a variety of new entrants, are now calling for the regulation of the funds that the cable television industry can put into programming. Is there going to be more children's programming? Not on your life. You can imagine that that investment is going to decline, and we are going to be going back to the children's programming wasteland, which was left to us by the commercial broadcasters.

If you look at a whole series of alternative programming, the cable television industry has invested billions and billions of dollars into the creation of that programming. As will be pointed out, the provisions of S. 12 that are truly onerous are those which would restrict the capacity of the industry to develop programming. Yes, it is going to compete against the other people, and they do not want that to happen. It will restrict the ability to gain the funding necessary to develop that programming, which is expensive. The people on the outside do not want the competition of that programming. And it will restrict the ability of these people who developed this programming to keep control of that and sell it to whom they want.

That is what this debate is all about, Mr. President. It is not about rates or about service, and it is not about retransmission consent. That will be made very clear, if we have any time for discussion tonight, tomorrow, or whenever this comes up. I will be back pointing out to individuals what this bill and the substitute is and what it is not. Members of the U.S. Senate should not be fooled as to what they are being sold. They are not being sold a piece of legislation that relates to somehow we are going to regulate rates and, if S. 12 does not pass, consumers are going to be ripped off. Wrong. The substitute has rate regulation in it as well. That is one of the reasons for having a bill. And the other reason for having a bill is service issues. Both bills regulate service.

What this is about is a frontal attack on competition in the industry. That is what S. 12 does.

I would note in summary that those who support the substitute have a ringing case that they can make that they are also endorsing rate regulation, they are endorsing better service for the cable industry, and they are accepting the same package of retransmission and must carry language that is in S. 12.

S. 12 contains all of these other extraneous provisions that are simply a frontal attack on the new industry and the new industry's ability to compete in a marketplace where there are a lot of other people who just do not want that competition. This has been going on for 60 years in American telecommunications history. There is another example of it here. I hope we do not, and my colleagues here, a majority of them, do not fall for this very thin anticompetitive use.

CABLE AND COLORADO

The cable television industry has a long history in my home State of Colorado and is an important part of the Colorado economy. Early cable systems began in communities with poor television reception, to provide people living in those areas with access to clear strong signals. The Rocky Mountains interfere significantly with broadcast signals in many rural areas of Colorado and several of the industry's pioneers began by offering cable service to small communities in my State. This early service would simply transmit by cable over-the-air broadcast signals to areas that could not receive them.

The industry has grown significantly since those early days and cable is now available in most of the country. Technological improvements made it possible to transmit more channels by cable than are broadcast to a given area. Now, instead of simply offering clear broadcast signals to viewers, cable systems offer a wide range of programming not available over the local airwaves. A number of the individuals who began operating small cable systems in Colorado have helped build the industry and several of the leading cable companies in the country.

As a result, Denver has been called the cable capital of the world. Three of the 10 largest multisystem operators are headquartered in Colorado, including two of the three largest. Colorado is also the home of Cable Television Laboratories, Inc. [CableLabs], the industry's research consortium. Cable contributes more than $500 million to Colorado's economy and brings nearly 10,000 jobs to my State. We have 168 cable systems that bring cable to 345 communities and 670,000 subscribers.

In the House of Representatives, I served on and for 6 years chaired the Telecommunications Subcommittee. During those years, I became very familiar with the cable industry and worked on a number of issues related to the industry. I was a principal author of the Cable Act of 1984, the most significant cable legislation enacted during those years. That legislation was intended to remove many of the barriers that limited the cable industry's ability to offer programming to American consumers. In the Cable Act, Congress encouraged greater competition for the broadcast networks in order to bring a wider range of choices to viewers.

BACKGROUND: PURPOSE AND EFFECT OF 1984 CABLE ACT

Prior to the Cable Act of 1984, the cable industry was extensively regulated by local franchising authorities. The fact is, during those years, the industry was the prisoner of a highly fragmented scheme of local regulation. Between 1976 and 1986, cable prices were allowed to increase at only two-thirds the rate of inflation and, in some cases, dramatically less. Before the Cable Act, the franchise process, particularly franchise renewals, was an uncharted mine field. No uniform guidelines existed from community to community. The franchising process was often used as a tool to accomplish social or political goals. An operator had no assurance upon franchise expiration that its cable business would not abruptly cease, even if it had provided outstanding service. This regulatory system made it nearly impossible for cable operators to upgrade their systems or develop additional programming services.

In 1984, Congress established a more uniform regulatory structure, implemented by the FCC, in order to encourage investment in new plant and equipment, programming, and technology. The Cable Act has worked: The number of cable subscribers has increased from about 30 million just prior to passage to more than 55 million today; 90 percent of cable subscribers receive at least 30 channels, with the average system offering more than 35 channels, in contrast to the 24 channels or less in 1983—nearly one-quarter of cable subscribers now receive 60 or more channels; channel capacity continues to increase. Just last month a 150-channel system was launched in New York, and importantly, the number of cable networks—like C-SPAN, CNN, ESPN, and TNT—has increased from 49 in 1984 to 68 in 1991, with continued expansion expected through the 1990's.

Deregulation has enabled operators to substantially increase their investments in plant and equipment; annual spending for this purpose was $100 million in 1983, before passage of the Cable Act. Since 1984, the industry has invested more than $5.4 billion in plant and equipment. Consumers have benefited from the improved picture quality, reliability, and increased number of channels that this investment and new technology makes possible.

Cable operators' annual investments for basic cable programming have jumped from $300 million in 1984 to almost $1.5 billion in 1991. Overall programming spending by both basic cable networks and premium cable services, like HBO, Showtime, and the Disney Channel, has climbed from $1.1 billion to $2.8 billion during this period.

The industry continues to invest in new technologies that promise to bring new benefits to consumers. Much of the research in this area is done at Cable Television Laboratories, Inc. [CableLabs], the industry's research and development consortium, located in my home town of Boulder, CO. It is worth noting that the cable industry has invested in a technology lab for the future at a time when many other industries have dropped their research capabilities. Technologies such as fiber optics and digital compression bring the promise of a huge jump in the number of channels available to viewers. The industry has already begun to introduce fiber optics in many systems throughout the country. Cable technology also allows for carriage of high-definition television signals and the industry is involved in research and development efforts designed to bring this technology to consumers. Interactive television is another area of research that could lead to a variety of new services.

The impact has been tremendous. For example, CNN has brought world events much closer to us. We have become used to seeing historic events such as the gulf war and dramatic developments in the Soviet Union and Eastern Europe as they happen rather than seeing brief flim clips after the fact. Some observers even credit CNN with helping bring about changes abroad because demonstrators are encouraged by the knowledge that their voice will be heard. Closer to home, C-SPAN has made television coverage of our debates commonplace. Viewers also now have a wider choice of entertainment, educational, and sports programming.

Moreover, the Cable Act includes a number of "public interest obligations" which the cable industry agreed to accept that are often overlooked by the industry's critics. For example, the Cable Act includes important equal employment opportunity provisions to prohibit discrimination in employment in the cable industry and encourage the industry to hire minorities and women. No other sector in the communications industry has agreed to a similar statutory obligation. Other provisions allow franchising authorities to require channels to be dedicated to public, educational, or governmental use and make channels available for lease for commercial use, prohibit redlining of services, and require operators to disclose to subscribers the kinds of information the cable operator collects and maintains about customers. Finally, the Cable Act permits cities to collect a franchise fee of up to 5 percent of gross revenues. The industry paid $826 million in franchise fees in 1991, up from $200 million in 1984. That's one quarter of the aid we provide cities throughout the Community Development Block Grant Program.

Since the passage of the Cable Act of 1984, the industry has been able to develop and deploy new technology, increase channel capacity and offer new programming and networks. These developments have brought cable to new areas and millions of new viewers, as well as increased programming variety and choices. Although the Cable Act has had enormous success in these areas, there are some problems in the industry that need our attention.

NEED FOR LEGISLATION/NEW ROLE IN 1990

The tremendous growth in cable television has not been trouble free. There have been some problems associated with basic cable rates. In some cases, financial players interested in maximizing short-term profit have taken advantage of rate deregulation. There have also been problems with customer service, some of which can be traced to the rapid increase in the number of cable viewers served by a company. The marketplace for video programming has changed significantly since 1984 and we should consider adapting the law to reflect the new circumstances. I agree that some fine-tuning of the Cable Act is needed to address problems in the areas of rates and customer service.

A new, stable regulatory environment would benefit the industry by ending the present uncertainty and could help protect customers from excessive rate increases and service problems. However, we should not go too far and return the industry to the regulatory morass that existed prior to 1984. That would seriously threaten the gains we have made as well as prevent further progress. Nor should cable be regulated as if it is a utility. We have made great strides in moving away from a communications sector made up of large, regulated monopolies with a guaranteed rate of return. Rather than imposing that outdated model on cable, we should encourage greater competition in the video programming marketplace so that viewers will benefit from a greater variety of choices.

Last year, when the Senate considered legislation in this area (S. 1880), I had reservations about some elements of that proposal and worked with Senator GORE to resolve those concerns so that S. 1880 could move forward. Senator GORE and I reached an agreement on an amendment regarding the program access issue that was one of my major concerns. After we reached that agreement, I had hoped that the Senate would consider the legislation and address the rate and customer service issues. I urged the Senate to consider the legislation. Unfortunately, the continued objections of other Senators and the President prevented the Senate from acting.

S. 12 OVERVIEW

The legislation we are considering today, S. 12, the Cable Television Consumer Protection Act of 1991, contains many provisions similar to those of S. 1880. However, a number of other provisions go well beyond those we considered last year and we need to carefully examine the legislation and its impact on consumers before enacting S. 12.

S. 12 includes many changes that are well outside the scope of basic rates and customer services, the problem areas that have largely driven the legislation. Some elements of S. 12 would fundamentally alter relationships between the cable industry and its competitors. The legitimate consumer concerns are being used as a vehicle for cable's competitors to obtain legislative assistance that we otherwise might not consider. Many of these extraneous provisions concern me deeply.

I am concerned that S. 12, in its present form will hurt consumers by hindering the development of new programming and technologies, ending the dramatic growth in the number and types of programs available to viewers that we have seen since the passage of the 1984 Cable Act. In moving to protect consumers from excessive rates and poor service, Congress must take care not to discourage the development of greater program diversity and new technology to deliver programming to America's homes.

We will have the opportunity to consider an alternative to S. 12 that I believe offers a more balanced approach. It will protect consumers and increase competition in the television industry without taking punitive action against the industry. I do not think it is perfect but I do think it is a workable approach and a substantial improvement over S. 12. I encourage my colleagues to join me in supporting this alternative. I would like to turn to the major issues in the cable debate and outline some of my concerns about S. 12 and discuss alternatives to the provisions of S. 12.

RATE REGULATION

Rate regulation should be our first priority in considering cable legislation. We have seen abuses in the area of rates and addressing this problem should be the goal of the legislation. But the picture is not what proponents of S. 12 would like us to believe.

The most recent GAO survey of cable television rates found that basic cable rates increased by 61 percent between November 1986 and April 1991. This increase does outpace the inflation rate. However, it is important that we place this rise in context.

A portion of the increase can be attributed to cable systems catching up to the artificially low rates during the years of local regulation. The FCC first affirmed local rate regulation in 1972. From that year until 1986—when the Cable Act limited the scope of local regulation—cable rate increases ran 72 points behind the increase in inflation. Inflation was high during those years and local regulation reduced rates in real dollars, keeping cable from investing in technology and programming. Increased rates have helped cable to catch up and make the investments that could not have been made under the previous regulatory structure. Viewers have benefited from those investments.

One of the results of that investment is the rise in the number of channels on the average cable system. There is no doubt that consumer are paying more for cable today than they did 6 years ago; they are also getting more. Last summer's GAO study looked at changes in cable rates on a per-channel basis as well as at the increase for basic service packages. The price consumers pay for each basic channel has increased, moving from 44 cents in 1986 to 53 cents in 1991. However, that rate of increase is actually less than the inflation rate over that period. When we adjust for inflation, consumers actually pay one penny less for each basic channel than they did before rate deregulation took affect.

Overall, the problem is not as severe as it has been portrayed. However, there have been some examples of abuses and looking at the average numbers is hardly consolation for those consumers who have found themselves facing an excessive increase. We do need to take steps to protect those consumers.

The Cable Act permits regulation of basic cable rates if the cable operator does not face effective competition. The Federal Communications Commission [FCC] recently tightened its standard of effective competition. To be exempt from regulation, a cable system must face competition from six over-the-air broadcast stations or another multichannel provider that is available to 50 percent of the homes in the cable operator's market area and subscribed to by 10 percent of the market area's homes. Under this standard, about 61 percent of cable systems, serving 34 percent of cable viewers, do not face effective competition and are subject to rate regulation.

S. 12 would further tighten this standard and make more cable systems subject to rate regulation. Under S. 12, a cable operator would face effective competition if the operator has competition from both another multichannel provider and a sufficient number of broadcast signals. A majority of homes in the cable operator's market area would have to have access to the competing multichannel provider and at least 15 percent of the homes must subscribe to the competing service. If less than 30 percent of the households in a cable system's market area actually subscribe, the system would be considered subject to effective competition and exempt from regulation.

S. 12 would require the FCC to establish guidelines for regulation of a cable system's basic tier and related equipment if the system does not face effective competition. Local franchising authorities could petition the FCC for authority to regulate basic service and the FCC must grant such authority if the Commission finds that the local authority's laws and regulations conform to the Commission's procedures, standards, requirements and guidelines.

This approach is similar to that taken in S. 1880 last year. However, S. 12 adds two new provisions related to the regulation of basic services. First, the FCC would be required to ensure that rates following changes in service tiers are reasonable. Second, if less than 30 percent of a system's subscribers only receive basic service, the FCC can regulate the lowest priced service tier subscribed to by at least 30 percent of the system's customers.

Finally, the legislation also includes "bad actor" provisions that allow the Commission to regulate rates for nonbasic services. If the FCC receives a complaint about these rates the Commission would be required to review the rate and establish a reasonable rate if the cable operator's rates are found unreasonable. This provision would not apply to programming that is offered on a per-channel or per-program basis.

I am concerned that S. 12 could lead to a return to the pre-1984 days of extreme local rate regulation. The Cable Act established a national policy for the regulation of the cable industry which—as the FCC concluded in its 1990 Report to Congress—successfully promoted investment in new technologies, increased channel capacity, improved programming, and expanded diversity. Extreme reregulation of the cable industry would choke off investment in plant and programming and is not in the consumers' interest. Cable has become a national industry and a patchwork regulatory structure would be a step backward. If S. 12 is enacted into law in its current form, I fear a return to the fragmented regulatory system of the past. Congress needs to address the rate issue. However, I am concerned that S. 12 could allow much broader rate regulation than S. 1880 would have, particularly for nonbasic services.

The alternative amendment that the Senate will consider seeks to increase competition for cable systems. However, it also includes some rate regulation provisions to complement the provisions designed to encourage competition. Competition from broadcast stations would no longer be sufficient to exempt a system from rate regulation. To be exempt a cable system must face competition from another multichannel provider which is available to half the homes in the cable system's service area and actually provides service to 10 percent of those homes. This would make virtually every system in the country subject to rate regulation. As with S. 12, local governments would be permitted to regulate rates if they follow FCC guidelines and standards.

The rate regulation provisions also would go beyond S. 12 into two areas. First, the substitute would repeal the provision in the Cable Act that allows for an automatic 5-percent annual rate increase for cable systems that are subject to regulation. This provision was a response to the high inflation rates of the late 1970's and early 1980's when cable rates increased at a slower rate than inflation. The lower inflation rates of recent years make it appropriate to reevaluate that provision. Second, the amendment includes provisions to allow for roll back of existing basic cable rates. This would permit the FCC to correct past abuses.

These provisions will help protect consumers from excessive basic cable rates. The best way to keep rates down is through increased competition. A business that has to worry about its customers switching to an alternative service will have a powerful incentive to keep its rates reasonable. The alternative includes measures to encourage competition which I will discuss in more detail later. I believe the rate provisions of the alternative complement the competitive provisions and offer an approach to the rate problem that is more workable than that taken by S. 12.

CUSTOMER SERVICE

As the cable industry has grown, some operators have not adjusted to that growth. As a result, in some areas, customers have complained about delays in responding to and correcting service or billing problems, and even a failure to answer customer service phone lines. There are basic responsibilities that a business has to its customers if it expects to stay in business. Some cable systems have taken advantage of their franchise to ignore such responsibilities as answering customer service lines. These problems are a significant source of consumer anger and frustration with the industry. We should act to address them.

The National Cable Television Association has adopted a set of customer service standards that members of the association were to implement last July. These standards specify how fast telephone calls must be answered, how quickly service and billing problems should be corrected, and how fast signals must be repaired. A July 1991 survey found that 85 percent of all cable systems were in compliance with those standards.

S. 12 would require the FCC to establish customer service rules—while grandfathering any municipal ordinance, agreement, or State law in effect on the date of enactment which exceed the Commission's rules. In addition to this grandfather, cities would be permitted to establish customer service requirements which exceed the standards set by the Commission unless the Commission declares, after notice and hearing and based upon substantial evidence, that the particular franchising authority's customer service requirements are not in the public's interest.

The alternative includes similar provisions. However, it would only permit State governments, rather than local governments, to establish new standards that exceed those set by the FCC. This will allow for more stringent standards without subjecting the industry to the burden of complying with a wide array of new rules that vary from town to town.

ACCESS TO PROGRAMMING

S. 12 also includes provisions to give cable's competitors mandated access to cable programming. This flies in the face of American business practices and copyright law. Other owners of intellectual property are not required to sell their work to particular parties, let alone to their competitors.

Exclusive intellectual property rights promote a diversity of information, entertainment, new technologies, et cetera. Without control over the resulting product, no one has an incentive to create intellectual property. That is why we have patent and copyright laws. A journalist does not have to allow any newspaper to carry a syndicated column; broadcast networks control what stations carry their programming; movie studios control who can distribute their product to the public. But S. 12 would take that right away from a cable programmer.

Under this scheme, owners of intellectual property would no longer be able to control the distribution of their product. Think about that. A person creates a piece of intellectual property. Then the Government effectively takes it out of his hands—dictates who he must sell to and at what price. That practice is unprecedented.

Think about what that means for the companies that have created programming. A company comes up with a program idea. It puts very substantial money up—often hundreds of millions—in a risky market to support the program service. As soon as that program becomes a success, competitors are at the door demanding access at Government set rates. It is easy to see how such a system would stifle the incentive to invest in new programs. The result will be less choice for consumers in the future.

Cable programmers should have the right to control use of their product unless there is an overwhelming and compelling reason to treat cable programs differently than other forms of intellectual property. I do not think there is a major problem that justifies such a change. Cable's major competitors already have access to cable programming.

Forty-two cable program services are sold to MMDS [wireless cable] operators. The Wireless Cable Association [WCA] has reported that all but one major cable program service is available to its members. WCA's president has testified before the Commerce Committee that wireless operators offer cable programming to their customers at prices comparable to or less than those offered by cable companies.

The National Rural Telecommunications Cooperative [NRTC] offers home satellite dish owners a package of 47 services. NRTC has experienced a significant increase in the number of subscribers in recent years. There are a number of other providers of programming to satellite dish viewers. Satellite dish owners can receive a package of programming comparable to basic cable packages for as little as $13.25/month. Basic service plus a premium network is available for as little as $18.75/month, less than the average cable subscriber pays for basic service alone according to GAO.

Competitors such as satellite dish distributors and wireless cable operators already have access to cable programming and can deliver those programs to viewers at competitive prices. However, they want more than access to cable programming. They want to be guaranteed access at the lowest possible price.

Wireless operators and satellite distributors have much lower regulatory, capital, and operating costs than cable. They could use this advantage to compete with cable by investing in programming and bringing new choices to viewers. That's how cable grew and that benefits consumers. Instead, they want to ride on the investments cable has made and use their lower costs to undercut cable on cable's own programming. Why should cable programmers invest in new programming, take risks developing and establishing a new service and then be forced to give a competitor a higher profit margin in offering the service?

If we pass legislation forcing cable to give its competitors this price advantage, cable will have little incentive to develop new programming. As a result, the industry will stagnate and consumers will suffer. The alternative to S. 12 includes other provisions to promote competition for cable that do not pose the intellectual property problems that S. 12 would create. It also requires an FCC report on competition within the video marketplace at the beginning of each Congress. This report must include specific recommendations for appropriate legislation or administrative action to promote competition. This will ensure that the FCC not ignore changes in the marketplace if cable programmers begin to unreasonably restrict access to programming.

MUST-CARRY OF COMMERCIAL STATIONS AND RETRANSMISSION CONSENT

S. 12 reinstates must-carry rules that require cable systems to carry local broadcast signals. Similar FCC rules were overturned by the courts in 1985. S. 12 would require cable operators to obtain the permission of a broadcast station in order to carry its signal. Broadcasters would have a choice of exercising this retransmission consent right or the must-carry rights. They could change their decision every 3 years but could not revisit it in the interim. A broadcaster could use the retransmission consent provision to negotiate compensation for carriage on a cable system or to deny permission for a system to carry its signal.

In general, the must-carry provisions of S. 12 would require cable systems to devote up to one-third of channel capacity to local commercial broadcast stations. Cable systems would not have to carry duplicative stations and could select which stations to carry if one-third of its channel capacity is not enough to carry all local stations. Broadcast stations would be entitled to be carried on the station's over-the-air channel position or the channel on which the system carried the station on July 19, 1985, the date the U.S. Court of Appeals overturned the FCC's previous must-carry rules. Cable systems with more than 36 channels would be required to broadcast up to 3 noncommercial broadcast stations while smaller systems would have to carry at least one such station.

I have always supported a reasonable must-carry regime. Carriage requirements give consumers convenient access to both cable and broadcast signals and, in many areas, better reception. Broadcasters benefit by being available through a technology which growing numbers of viewers prefer. And cable systems benefit by obtaining programming that remains very popular with viewers.

Despite these benefits, both broadcasters and cable operators have some complaints. Some cable systems would like to free up channels for other programming from which they would reap advertising dollars. Some broadcasters, on the other hand, are concerned that they wind up providing a competitor with valuable programming virtually free of charge. These are legitimate issues.

I have little problem with the notion of a retransmission consent provision or a reasonable must-carry regime. However, the retransmission consent provision, when paired with the restoration of must-carry requirements, creates an unbalance and raises as many questions as it answers.

For instance, cable systems can argue that pairing retransmission consent with must-carry gives broadcasters too great an advantage. On the one hand, popular stations that cable systems want to carry will be able to obtain payment or force the system to do without broadcast programs. On the other hand, a less attractive station that would benefit from being carried on a cable system would be able to use the must-carry rules to guarantee access to the system at no charge. Carriage of broadcast signals on a cable system can benefit both parties. Who benefits more will vary from case to case and it's understandable that one party will often expect compensation from the other. However, the combination of must-carry with retransmission consent gives all the leverage in negotiating the relationship to the broadcaster.

Some broadcasters may wind up not being carried on a cable system, either by design or inability to reach an agreement with the system. Reception problems may limit some viewers' access to broadcast programs, particularly in rural areas. Higher costs for distant signals could also significantly reduce consumer access to some stations. We have to consider if these possible effects on consumers' access to broadcast programming are a price worth paying.

It is also an open question as to whether broadcasters will be the ultimate beneficiaries of retransmission consent. Should payments for programming go to broadcasters or should they go to those who create and own the programming?

Retransmission consent will also substantially drive up cable system costs. Inevitably some of these increases will be passed along to consumers. We in Congress need to ask ourselves if we want to include a provision likely to increase cable rates in legislation that is meant to respond to concerns about increased rates.

Cable systems could choose not to pass the costs of obtaining retransmission consent along to consumers. In this case, the resources are likely to come from the system's existing programming budget. This would reduce the funds available to purchase or invest in programming that is not available from broadcasters. The result would be less variety in the program choices available to viewers.

There are a lot of questions that need to be raised and discussed with respect to retransmission consent; it may well be that a reasonable must-carry provision may prove more workable. But combining the two is inequitable to the cable industry. We should instead work for a provision that benefits broadcasters, the cable industry, and, most importantly, consumers.

STRUCTURE AND OWNERSHIP

The legislation would require the FCC to set both horizontal concentration and vertical integration limits. The FCC would have to limit the number of subscribers that any one cable operator can serve through systems owned by the operator or in which the operator has an attributable interest. The vertical integration rules would place limits on the number of channels that can be occupied by a programmer in which a cable operator has an attributable interest.

S. 12 would prohibit cable operators from owning a multichannel multipoint distribution service [MMDS]—a prohibition that already exists under FCC rules—or a satellite master antenna television service [SMATV] in the same areas in which it has a cable franchise. The legislation also requires the FCC to limit ownership of satellite distributors by cable operators once direct broadcast satellite [DBS] market penetration reaches 10 percent of American households.

I am concerned that S. 12 would require the FCC to establish concentration limits even if the Commission determines that they are unnecessary. The FCC, the Department of Justice [DOJ], the National Telecommunications and Information Administration [NTIA] have already stated that such limits are not needed. Specifically, the FCC concluded in its July 1990 report to Congress that there is no need to act now and a 3-year report would be sufficient to determine if such limits are necessary. The DOJ concurred with the FCC stating that because the industry remains relatively unconcentrated, and because the many benefits of vertical integration outweigh the costs, there was no need to establish such limits now. In addition, the NTIA found that vertical integration does not appear to cause significant competitive problems within the cable industry itself.

It's possible that limits may become necessary at some point and we should allow regulators to establish such limits. However, we should not mandate that they do so. If a problem develops, the FCC has some authority to act in this area. The Department of Justice can also take steps to enforce our antitrust laws if problems develop. Rather than mandating action that may not be appropriate, we should carefully monitor the situation and make sure that regulators have appropriate authority to act if the need arises.

Moreover, the availability of virtually limitless DBS capacity through the use of digital compression technology makes it impossible for any single entity to obtain a DBS monopoly. For this reason, concentration limits and cross-ownership restrictions are not as important in this industry as they would be for others. And importantly, if limits become necessary, the FCC has the authority to establish ownership restrictions for DBS just as it has in the past for other communications media.

S. 12 WRAP-UP

To sum up, S. 12 goes well beyond the legislation we considered last year in a number of areas. It would stifle any further investment in programming and greatly harm an important media industry. It is cable operators, not banks, that have provided most of the financing for cable networks, which include CNN, C-SPAN, the Discovery Channel, Lifetime, and Black Entertainment Television. S. 12 in its present form would choke off the development of new cable networks, the improvement of existing programming, the expansion of channel capacity, and the development of new technologies like fiber optics and HDTV.

It is particularly unfortunate that S. 12 would pervasively regulate an industry that has a clear worldwide leadership position. The cable industry is building a communications infrastructure that is the envy of the world. In fact, many foreign companies, in conjunction with U.S. companies like Time Warner, are building cable systems using the U.S. cable model. Cable is a growth industry, investing and creating jobs in America. Can we afford to impose on such an industry an intrusive regulatory structure that will stifle investment and growth? I think the answer is "No."

Some provisions of S. 12 may he
consumers. Unfortunately, the legisl
tion gives with one hand and tak
away with another. Of course, the be
efits to consumers are easier to s
than the costs. We should pass legisl
tion to fine-tune the Cable Act ar
protect consumers. But S. 12 takes tl
wrong approach in many ways.

ALTERNATIVE APPROACH

I do believe we should pass cable le
islation this year and I have work
with Senators PACKWOOD, KERRY, ar
STEVENS to develop an substitute to
12. Although I have concerns abo
some aspects of that substitute and
is not the approach I would have d
signed, I believe it is a workable a
proach and is preferable to S. 12 as
currently stands.

The substitute does include prov
sions which I have already discusse
to address the rate and customer ser
ice issues. These areas should be o
priorities. However, its overall a
proach is directed toward encouragin
greater competition for the cable i
dustry. For example, it would encou
age establishment of additional fra
chises so that a cable system could n
have an exclusive franchise in its ser
ice area. The amendment would pr
hibit a franchising authority from u
reasonably refusing to grant a secon
franchise. The amendment also i
cludes provisions to encourage munic
pally owned and operated cable sy
tems.

In addition to those provisions to e
courage local authorities to allow mor
than one cable system in an area, th
alternative includes provisions to hel
other industries compete with cabl
For example, the amendment remove
cross-ownership restrictions that lim
a broadcaster to ownership of no mor
than 12 television stations, 12 F
radio stations, and 12 AM radio sta
tions. This provision is designed t
help large broadcasters compete wit
the cable industry. Telephone compa
nies are considered to be strong poter
tial competitors for cable system
However, there are serious concern
about the competitive effects of the
entry into new businesses. Currentl
most telephone companies can provid
television programming within the
service areas if the area has less tha
2,500 residents. The alternative woul
increase that level to 10,000 resident
The new exemption would cover one
third of the population. The expande
exemption will encourage greater com
petition for cable systems in rura
areas and help policymakers assess i
broader telephone company involve
ment in cable is appropriate.

We also need to carefully track com
petition in television programming. A
some point, further ownership restric
tions or other measures not include
in the alternative could become appro
priate to ensure that the industry re
mains competitive and continues t
bring new and affordable service t
viewers. For this reason, the alterna

tive requires the FCC to provide Congress with a report on competition in the video marketplace at the beginning of each Congress. This report must make specific recommendations of steps that the administration and Congress could take to promote competition. This report will force the FCC to regularly examine the issue and take any necessary actions that it has the authority to do, as well as spur Congress to act in areas beyond the Commission's authority.

I do not support each element of the substitute. For example, I am not sure we should completely repeal the broadcast cross-ownership limits at this time. But, as a whole, I believe the substitute is preferable to S. 12. It provides for greater regulation of rates and customer service than we have today. It also encourages greater competition for the cable industry. Fundamentally, competition is the best approach to ensure that consumers have access to a variety of programming at reasonable rates. That should be the goal of this legislation and I believe the substitute does a better job of advancing those goals than the version of S. 12 reported by the committee. I encourage my colleagues to support that amendment.

I believe we can produce a good bill. I believe we should produce a bill. But I think we can produce balanced legislation that protects the consumer without delivering a devastating blow to the cable television industry. I hope my colleagues will agree and join me in trying to resolve this issue.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut is recognized.

Mr. DODD. I thank the Chair.

(The remarks of Mr. DODD pertaining to the introduction of S. 2170 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(Ms. MIKULSKI assumed the chair.)

Mr. METZENBAUM. Madam President, are we on the bill at the present time or in morning business?

The PRESIDING OFFICER. We are on the bill. Does the Senator wish to speak to it?

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. The Senator may proceed.

Mr. METZENBAUM. Madam President, I have been concerned today about several matters and spent the good part of yesterday as well as this afternoon in connection with three different issues, one of which has been resolved by the assurances which have already been made by the chairman of the subcommittee having jurisdiction of communications for the Commerce Committee.

There are two other issues, and I would like to now address myself to them separately. Some cable operators have failed to disclose critical information about rates and service to their customers. When somebody called and wanted to buy cable, they did not get all the information as to whether there was a lower tier and what the lower tier might include and what the price for that would be.

We all know that the cable industry has begun to offer its customers a low-priced tier of service composed chiefly of local over-the-air broadcast channels. As the price of cable service continues to rise, this low-priced tier may become the only viable option for working families on a limited budget. Surprisingly, too many cable companies fail to tell potential customers about the existence of this low-priced tier of service.

As a matter of fact, last year, officials from the General Accounting Office posed as potential cable subscribers and contacted 17 cable companies which offered multiple tiers of basic service. The General Accounting Office reports that over half the companies contacted—over half of the companies contacted—did not even acknowledge the existence of the lower-priced tier of basic service even when asked about it. That is hard to believe, but that is the report from the General Accounting Office, the integrity nobody would ever think to question.

There have also been instances in which cable companies have failed to give notice of any changes in the rates or in the tiers of service offered by cable operators. There have been reports that some consumers have been switched to a higher-priced tier of service without their knowledge.

It is my understanding that this bill instructs the FCC to adopt customer service standards. May I ask the managers of the bill if I am correct in that understanding?

Mr. INOUYE. Madam President, the Senator is correct.

Mr. METZENBAUM. I ask Senator Danforth.

Mr. DANFORTH. That is correct, Madam President.

Mr. METZENBAUM. I appreciate the responses.

It is my understanding that the committee intends for those customer service standards to include a requirement that cable operators disclose—and I am quoting from the report—"all available service tiers [and] prices for those tiers and changes in service." Am I correct in that?

Mr. INOUYE. We felt this matter was so important that we placed in in our report.

Mr. DANFORTH. Madam President, that is in the committee report and that is correct.

Mr. METZENBAUM. And the intention of the managers of the bill and the committee is in accordance with the representations the Senator from Ohio has just made?

Mr. INOUYE. Madam President, the Senator is absolutely correct.

Mr. DANFORTH. That is correct, Madam President.

Mr. METZENBAUM. I thank the managers of the bill. I think with those assurances, we can be satisfied that greater protection will be accorded the cable purchasers in this country.

The third matter that has been of concern to me has to do with the question of whether or not this act would in any way provide an exemption from the antitrust laws. The amendment makes it clear that cable companies will still be fully subject to the antitrust laws.

The amendment is actually needed because S. 12 contains provisions which are designed to prevent anticompetitive conduct by cable companies and some cable companies might very well argue that Congress intended to have the procompetitive regulatory provisions of S. 12 serve as a substitute for the antitrust laws. This amendment will prevent needless litigation over this issue by clarifying that the antitrust laws still apply in full to the cable industry.

AMENDMENT NO. 1518

Mr. METZENBAUM. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1518.

At the end of the Committee substitute, add the following:

SEC. 24. APPLICABILITY OF ANTITRUST LAWS.

(a) No Antitrust Immunity. Nothing in the Cable Television Consumer Protection Act of 1991 shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

Mr. METZENBAUM. Madam President, it is my understanding that this amendment is in accord with the intention of the managers of the bill, and if that is the case, I am prepared to move forward with this amendment.

Mr. INOUYE. Madam President, the amendment before us is the result of over 10 hours of discussions and consultations involving the distinguished Senator from Ohio, several members of the committee, and countless numbers of staff people.

We have studied the amendment very carefully, and we find that it is acceptable.

Mr. DANFORTH. Madam President, after discussing this matter with Senator Metzenbaum earlier in the day, we have discussed it with the staff of the Judiciary Committee. I understand that Senator THURMOND has been consulted on this matter, and it is my understanding from talking to people who do have expertise in this area that this amendment does express existing law on antitrust, and therefore the amendment is not objectionable.

Mr. METZENBAUM. Madam President, I am prepared to proceed and act upon the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1518) was agreed to.

Mr. METZENBAUM. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Madam President, I wish to express my appreciation for the number of hours of negotiations that we have had in connection with these three matters. I thank the managers of the bill for their cooperation.

ACCESS TO DBS PROGRAMMING

Mr. GORE. Madam President, I wish to engage the distinguished chairman of the Communications Subcommittee in a brief colloquy regarding the access to programming provisions of Section 640(a) of S. 12. That provision is intended to prevent vertically-integrated cable companies from locking up programming, thereby denying alternative multichannel video distributors, such as DBS, C-Band, or wireless cable, the ability to compete effectively. I want to make certain, however, that this language would not have the additional, undesirable effect of prohibiting a new entrant into the video marketplace, such as a wireless cable company or a direct broadcast satellite company, which is not part of any vertically integrated media conglomerate from entering into any type of lawful contractual arrangement with a programmer for programming developed for distribution over only one of these alternative technologies. Am I correct in my understanding that section 640(a) is in fact targeted at the vertically integrated cable companies?

Mr. INOUYE. The Senator's understanding is correct. This provision is not intended to limit the business flexibility of new, nonvertically integrated entrants into the video distribution marketplace. It does not impose any requirement to make available to cable operators programming developed solely for distribution over only one alternative multichannel video distributor, such as DBS, C-Band, or wireless cable.

Mr. BRADLEY. Madam President, I rise today in support of S. 12, the Cable Television Consumer Protection Act. I believe it promotes competition and protects consumers from anticompetitive activity.

The cable industry has grown rapidly over the last decade. Nearly 54 million households, 60 percent of the households with televisions in this country, depend on cable for news and entertainment. Cable television has revolutionized the way Americans receive their news and entertainment. It has increased the variety of programming available to the American public and has improved the quality of communication between the citizens of this vast and diverse Nation. Those of us who can afford cable now have choices that we did not have a decade ago. On any given day or night, we can choose from continuous news programming, the performing arts, educational instruction, community-oriented programming, and other forms of entertainment. Thanks to the innovations and vision of many in the cable industry, television is very different today than it was just 10 years ago.

Yet we are fast approaching a society of haves and have-nots when it comes to cable television, Madam President. As I see it, one segment of our society will be able to continue to pay high prices for cable services that many of us now consider essential, while another sector will become less able to afford these services.

The vast majority of Americans have no power of choice as to their cable provider. Of the 11,000 cable systems in America, less than 0.5 percent compete with another cable system in the geographic area covered by their franchise. Where competing systems have emerged in communities, they have often been merged with existing systems. The benefits of cable television are so great that they should be available to as many people as possible. But the absence of competition within the cable industry makes this virtually impossible.

In 1984, Congress encouraged the development of cable by restricting local government's ability to regulate basic rates. The 1984 Cable Communications Policy Act deregulated rates for about 97 percent of all cable systems and actions by the FCC to implement the act further freed the industry.

While deregulation encouraged the growth responsible for many of the positive developments I have discussed, it also allowed the cable companies to drastically raise their rates. According to a 1991 GAO study, monthly rates for the lowest priced basic service increased by 56 percent from the beginning of deregulation in December 1986 to April 1991, from $11.14 per subscriber to $17.34 per subscriber. By comparison, monthly rates for the most popular basic cable service increased by 61 percent, from an average per subscriber of $11.71 to $18.84. These rates of growth are three times that of inflation.

In my home State of New Jersey, Madam President, cable rates have increased 70 percent since deregulation. In the city of Newark, rates have increased 130 percent. We all agree that cable has made more information and entertainment available to Americans. One only has to remember back to the Persian Gulf war to understand that point. But these rate increases are excessive, and must be controlled if Americans are to continue benefiting from this very important service. If cable companies were subject to competition, they would be unable to impose these rate increases.

S. 12 contains several provisions which protect consumers and promote competition within the cable and multichannel video industries. It allows the FCC and local governments to regulate the price of basic cable in communities that are not subject to effective competition, neutralizes the effect of retiering of cable services, limits the ability of cable operators to wield unreasonable influence over programmers, and limits the ability of cable programmers to discriminate against noncable, multichannel video providers. S. 12 also establishes national consumer service standards for cable operators and contains must-carry provisions which ensure that educational and public-interest television stations are carried by cable operators.

I believe the Packwood-Kerry-Stevens substitute which some of my colleagues support would not adequately promote competition or provide the protections consumers need.

Madam President, I am very proud of the fact that this year's cable bill includes a franchise renewal provision which I had sought to add to last year's unsuccessful cable bill. This provision makes clear that local franchising authorities are not required to finish their investigation of a franchise owner's performance within a 6-month period, as has been suggested by the cable industry, ensuring that local authorities have a sufficient amount of time to conduct a thorough investigation of the cable franchise prior to considering its renewal application.

Government regulation is never an adequate substitute for the discipline of the market. But where consumers cannot vote with their pocketbooks for lack of competition, Government has a duty to protect their interests. Hopefully, sufficient competition will soon develop in this market to eliminate the need for Government regulation. Because that day has not yet arrived, I support this legislation.

Mr. INOUYE. Madam President, I thank the Senator from Ohio very much.

I would like to announce to the Members of the Senate that I am aware of one more amendment. We are in the process of resolving this matter, and so may I suggest the absence of a quorum to call the author of the amendment to the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1519

(Purpose: To require an economic impact statement)

Mr. WALLOP. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1519.

Mr. WALLOP. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 116, strike out lines 20 through 26 and insert in lieu thereof the following:

REPORT; EFFECTIVE DATE

SEC. 23. (a)(1) Within 90 days following the date of the enactment of this Act, the Federal Communications Commission shall carry out a study for the purpose of conducting an analysis of the impact of the implementation of all rules and regulations required to be issued or promulgated by this Act, and the amendments made by this Act, on employment, economic competitiveness, economic growth, international trade, consumer welfare gained through curtailing monopoly practices of cable companies, and increased opportunities for small businesses and other entrants into the video marketplace to compete with cable.

(2) Such analysis shall also consider the extent to which, if any, the implementation of such rules and regulations would involve the States and political subdivisions thereof, in such implementation and the costs, if any, in requiring such States and subdivisions to assist in carrying out such implementation.

(3) The results of such study shall be reported to Congress within 180 days following the date of the enactment of this Act.

Mr. WALLOP. Madam President, it is my understanding that the able managers of this bill have agreed to accept this amendment, and I appreciate that.

I thank them and their staffs, in particular, for cooperating with us on it.

The amendment that I rise to offer is to provide an objective analysis of the regulations required under S. 12, the Cable Consumer Protection Act. This analysis would determine the impact of the regulations on employment, economic competitiveness, economic growth, international trade, and the consumer and taxpayer alike.

The analysis will also consider whether or not these regulations would entail an administration by U.S. municipalities and, if so, what costs would be borne by those municipalities to adhere to their new regulatory responsibilities. All too often, we throw Federal mandates in the laps of local governments without any real guidance.

I recall to this body that it was part of the President's speech that we did that.

More importantly, we fail to provide funding to cover their administrative costs. As result, State and local governments are raising taxes to keep pace with the federally imposed programs, businesses struggle to survive, and what is originally intended as a consumer benefit eventually deprives taxpayers of their hard-earned dollars.

Madam President, this amendment is similar to another amendment I offered—and the Labor Committee chairman accepted—to the minimum wage bill adopted by the Senate in 1989. Unfortunately that minimum wage bill was vetoed by the President and the subsequently enacted legislation did not contain my regulatory impact amendment. But let me assure my colleagues that if this amendment is not accepted today, I intend to offer it to numerous other legislative items this year.

We have been debating various versions of cable reregulation legislation for the past 3 years. The proponents of S. 12 believe that excessive regulation is the only appropriate response to consumer complaints of exhorbitant rate increases, poor services and minimal competition. My amendment will expose faulty perceptions with accurate information.

We as a governing body cannot seem to break the habit of strangling the business sector of our economy with regulatory restraints. Where the free market system fails to perform to public expectations, we impose regulatory controls. But those regulations are not without cost—not only to businesses, but to the consumer as well. We cannot and should not ignore the fact that regulations are a poor substitute for free enterprise. Perhaps this analysis will once and for all convince my colleagues that regulations are not without cost for all sectors of our economy.

President Bush recently imposed a 90-day moratorium on new regulations. Some of us here might ask why. It obviously was not to appease the special interest sector of our society. Those special interest groups believe that business regulation is the least expensive way to achieve national objectives. The regulations cost the government very little in direct expenditures compared to the indirect costs imposed on the general public.

If Congress had to enact a regulatory budget for every new environmental law we imposed, our current budget deficit would seem miniscule by comparison. So this moratorium was not without some definitive evidence of the severe impact regulations are having on our economy. Environmental regulations cost each family more than $1,000 a year. Every autobody repair shop will have to spend about $100,000 for equipment to comply with the emission standards contained in the Clean Air Act. Thousands of other businesses will spend between $10,000 and $20,000 just to gather the data and do the paperwork to apply for a clean air permit. I am just as concerned about a healthy environment and a safe workplace as the next person, but certainly there must be more rational and cost-effective manner for achieving those goals. My amendment will provide the data to sustain that challenge.

Madam President, I would agree that there are a few bad actors in the cable industry who have raised prices, provided poor service and retiered programming choices. But let us not punish the masses for the misdeeds of the few. Regulation generates many side effects. It stifles innovation and forces prices to rise when new technology is not widely available. And when industry is shackled by governmental directives, it is the consumer, the citizen, not the business, which bears the costs of compliance. So herein lies the challenge of this amendment: to educate the public and ourselves about the disruptive and costly impact of regulations on the economy. I urge my colleagues to join me in supporting this analysis so that we might improve our understanding of the costs imposed by regulations.

Madam President, by way of footnoting the importance of this, a study group figured that American business now pays $400 billion a year in complying with regulations that we in this Congress have authorized the agencies of Government to create. So it is time that we begin to ration our desire for new and imposing regulatory requirements, to the extent that those are necessary. And I appreciate both the Senator from Hawaii and the Senator from Missouri for allowing me to insert this in there as a small and extremely modest step in that direction.

Mr. INOUYE. Madam President, this amendment is the result of many hours of negotiations, discussions, and consultations, and the managers of the measure are satisfied with the amendment.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Madam President, I especially appreciate the comments by the Senator from Wyoming about the effect of legislation on State and local governments. I know that what we have heard from State and local governments on this legislation is that they do not think it goes far enough. But we have attempted to meet their legitimate concerns in trying to get greater control over what is going on in their communities. We have reviewed this amendment, and it is satisfactory.

Mr. WALLOP. Madam President, I say to my friend from Missouri, who, as an old minister of the cloth, would know that there is a statement that one must be careful what one prays for, lest one gets it. I hope and trust that be not the case with this. One of the reasons for this amendment is just that.

I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 1519) was agreed to.

Mr. WALLOP. Madam President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Madam President, I thank the Chair and the Senators from Hawaii and Missouri.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Madam President, I ask unanimous consent that I may proceed for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERSTATE BRANCHING BY FEDERAL SAVINGS ASSOCIATIONS

Mr. FORD. Madam President, there has been a growing concern in recent years that too many major policy changes affecting financial services in this country are taking place by regulation or by court decision, and not by legislation.

There are simply some areas where policy decisions should be made by elected representatives through legislation.

I have shared this concern. That is why I was troubled to learn of the most recent attempts to continue this trend, when on December 30, the Office of Thrift Supervision proposed allowing nationwide branching for Federal savings and loan associations. The OTS proposal would apparently preempt State laws in this area, and is designed to allow federally chartered thrifts to branch nationwide, regardless of whether States wish to permit branching.

Last fall, we spent a great deal of time on this floor debating banking reform legislation. Some wanted a broad reform bill. Some wanted a narrower bill. And that is basically all we had time to pass. But during the course of that debate, we considered a number of important issues. One such issue involved interstate banking and branching for commercial banks. An amendment I offered in this area was adopted by the Senate. It was an attempt to balance the rights of States, the franchise interests of financial institutions, and the interests of those seeking greater interstate banking and branching. These same interests must be balanced when it comes to savings and loan institutions as well.

No final action was taken on this issue in 1991 for a number of reasons. Among other things, there was not sufficient support in the House for a broader banking bill, and there was not sufficient time to reach a compromise before the end of the session, but this issue will continue to be debated.

Now, however, the administration is apparently attempting to accomplish by regulation for S&L's what it could not accomplish by legislation for banks. I believe this blank check approach to interstate branching is unwise and unwarranted.

Do not get me wrong: I am not opposed to interstate branching. Under my amendment to the banking bill, there would have been an increase in interstate branching activity. There is no question about that. And I am not saying that the rules for savings and loan institutions have to be exactly the same as they are for banks.

What I am saying, however, is that certain rights have to be respected, and I underscore "respected." The rights of States, for instance. Under current law, thrift institutions already have the ability to branch interstate. But it can only be done where it is permitted under State law for State chartered institutions. Thirteen States have chosen to allow interstate branching, and there has been a significant increase in this activity over the last decade.

But, Madam President, 37 States have not chosen to allow interstate branching for S&L's. In my view, that is their right. That is a State's right. It is also a State's right to set certain terms of entry for out-of-State institutions, such as requiring that they enter only by buying existing institutions.

But that is not the administration's view. Under the OTS proposal, all federally chartered thrifts would be able to branch nationwide, regardless of whether a State allows the activity. And regardless of whether a State chooses to develop any terms of entry for interstate branching.

This is unfair to States. It is also unfair to State-chartered thrifts, many of which will be at a competitive disadvantage. And it is unfair to many well-run institutions, some of which have served their same communities for decades. The reason some States would allow branching only through the acquisition of existing institutions is to protect the legitimate franchise interests of many smaller thrifts.

The OTS proposal ignores these legitimate interests, and it ignores many of the other issues which we debated here on the Senate floor for banks. I object to this proposal for these policy reasons.

And I also object on procedural grounds. As I stated, the proposed rule was published in the Federal Register on December 30, with only a 30-day comment period. This comment period ended yesterday, January 29. I was pleased to join with the distinguished Senator from Arkansas [Mr. BUMPERS] and 17 other colleagues in sending a letter to the OTS yesterday objecting to this proposed rule.

It is not the type of major policy change which should be made through a notice filed during the holidays. It is not the type of policy change which should be made without any consideration of the rights of States or the interests of many small financial institutions. And in my opinion, Madam President, it is not the type of policy change which should be made without any discussion in this Chamber and within this Congress.

Madam President, the savings and loan institutions in my State are among the healthiest in the Nation. They have stayed healthy in recent years, I believe, in large part because they have not strayed from their original mission. They expect to remain healthy into the future. Madam President, the savings and loan institutions in my State are not asking for unrestricted nationwide branching. They are not asking for this major policy change being proposed by the administration. I wonder who is doing the asking. I urge all of my colleagues to take a close look at this proposed rule and consider the implications it has for financial services in their State.

Madam President, I ask unanimous consent that the letter to Timothy Ryan, Director of the Office of Thrift Supervision, signed by myself, Senator BUMPERS and 17 other Senators be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, January 28, 1992.

TIMOTHY RYAN,
Director, Office of Thrift Supervision, Washington, DC.

DEAR MR. RYAN: The purpose of this letter is to voice our objections to the notice published in the Federal Register on December 30, 1991, concerning the proposed rule to allow interstate branching by federal savings associations.

After lengthy debate and consideration in both houses of Congress, the Congress failed to enact legislation that would have allowed full interstate branching by banks. The rule proposed by the Office of Thrift Supervision would allow federally chartered thrifts to do precisely what banks may not do under current law—branch across state lines regardless of state law.

While you may believe that current law gives you the authority to promulgate rules allowing unrestricted interstate branching, we believe it is imprudent for the OTS to exercise that authority. We ask that the proposed rule be rejected.

In addition, we believe that the comment period should be extended beyond January 29, 1992, in order to give all interested parties a fair opportunity to assess the proposed rule and voice their criticism or support.

Wendell Ford, Dale Bumpers, Paul Simon, Harris Wofford, Wyche Fowler, Jr., David L. Boren, Brock Adams, J.J. Exon, Jim Sasser, Jay

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, December 30, 1991.

Hon. NICHOLAS F. BRADY,
Secretary of the Treasury, Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: As you know, on December 18 the President went to Texas to sign the Surface Transportation Act. This was—at least we feel, and the President so stated—the most important legislation of its kind in 35 years. Those of us in Congress who wrote the bill very much wanted to be on hand when it was signed and a large "CODEL ROE" lead by our Chairman Bob Roe of New Jersey was assembled for that purpose and arrived at the site—a new highway being built in the Dallas-Fort Worth area—in good time and good spirits.

The President could not have been more gracious in his personal and public remarks. He then went off to lunch. As we might have done. But the Secret Service froze the site, as they say. For almost an hour a hundred or so of us (including Congressional staff and invited guests) were left to stand in the rain and the mud. Buses in sight. As also the usual detail of strutting agents with high power rifles in case we got unruly. Finally the Secret Service decided it was safe to let us get on the buses.

Their behavior was insufferable. But also routine. I don't know if the organization itself is aware of how arrogant and presumptuous it has become. This armed intrusion into the simple ceremonies of the Republic is a disgrace and a danger. Clearly its fantastic budget is fantastically bloated. I hope you will think of this at budget time.

I speak only for myself, obviously. But I assure you sentiments very like mine were voiced repeatedly as we flew back to Washington.

Respectfully,

DANIEL PATRICK MOYNIHAN.

Mr. MOYNIHAN. And I do hope that the appropriate committees ask themselves in this budget round whether we really need so vast a Secret Service. Might a leaner organization be a more vigilant one? No care can be too great to protect the President and the Vice President. But there is such a thing as excess and it ought to be avoided in a republic.

Madam President, I thank the Senate, and seeing no Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S.12

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1520

Mr. GORTON. Madam President, I send two amendments to the desk and ask they be considered together, and ask for their immediate consideration.

The PRESIDING OFFICER. Is there objection to the en bloc consideration? Without objection, the Senator may proceed. The amendments will be considered en bloc. The clerk will now report the amendments.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1520.

Mr. GORTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following:

EXPANSION OF THE RURAL EXEMPTION TO THE CABLE-TELEPONE CROSS-OWNERSHIP PROHIBITION

SEC. 24. Section 613(b)(3) of the Communications Act of 1934 (47 U.S.C. 533(b)(3)) is amended by striking "(as defined by the Commission)" and inserting after the period the following: "For the purposes of this paragraph, the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of the enactment of the Cable Television Consumer Protection Act of 1992.".

NO PROHIBITION AGAINST A LOCAL OR MUNICIPAL AUTHORITY OPERATING AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR

SEC. 25. Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by inserting "and subsection (f)" before the comma in paragraph (b)(1) and by adding the following new subsection at the end thereof:

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a mulitchannel video programming distributor.".

On page 112, line 1, insert "may not grant an exclusive franchise and immediately after "authority".

Mr. GORTON. Madam President, as the President is well aware, the distinguished Senator from Hawaii and the distinguished Senator from Missouri and I have been ready to debate the most substantive issue involved with respect to this bill for some time but, due to an injury to our friend the Senator from Oregon, and various drafting problems, that substitute has not yet been presented to the Senate. That substitute, while we believe it to be insufficient with respect to the creation of competition or the limitation of monopoly, nevertheless, as we have looked at it, has a few good features. Two of those features modestly increase the scope for competition in the cable television industry.

These two amendments which we are considering jointly, take those two modest improvements in the competitive status from that substitute and will incorporate them in the bill which is before the Senate at the present time.

One of those amendments expands a current situation in which telephone companies can provide cable TV services in rural areas, which are in turn defined as areas without an incorporated community of more than 2,500 residents to 10,000 residents; expanding rather considerably that rural exemption.

It will create a competitive situation in such areas and also will provide an incentive for these telephone companies more quickly to provide fiberoptic systems in those areas.

It also makes it clear that no provision in the Communications Act prohibits a local authority of whatever size from operating a cable system in competition with the cable system already franchised in that municipality.

The second amendment prohibits a franchising authority from granting an exclusive franchise to any cable operator; that is to say, encouraging competition by saying to a given city: You cannot make it exclusive. You do not have, necessarily, to grant a franchise to everyone who wants one, but you cannot guarantee exclusivity.

Each of these will modestly increase the competitive nature of cable television. Neither of them is controversial. Both of them, on the adoption of these two amendments, will make identical in this respect the two proposals which will be dealt with here. They have been cleared, I believe, by both sides. I know by this side.

I ask they be incorporated into the committee substitute.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, I wish to first commend my colleague from the State of Washington for this amendment. It not only gives S. 12 much clarity; it should add a few more supporters. I enthusiastically support the amendment.

The PRESIDING OFFICER. Is there further debate? If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1520) was agreed to.

Mr. GORTON. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I would like to engage the manager of S. 12, Senator INOUYE, in a brief colloquy regarding the retransmission consent provision in the bill.

The election of retransmission rights versus must-carry by broadcasters is sanctioned by S. 12 and will likely occur, though there is no reliable way to predict the percentage of broadcasters that will choose retransmission rights. The bill directs the FCC to conduct a rulemaking proceeding to establish rules concerning the exercise of stations' rights to grant retransmission authority under the new section 325(b). But, the bill does not directly address the possibility that broadcasters and cable operators in a particular market may be unable to reach an agreement, resulting in noncarriage of the broadcast signal via the cable system. I strongly suggest, and hope that the chairman of the subcommittee concurs, that the FCC should be directed to exercise its existing authority to resolve disputes between cable operators and broadcasters, including the use of binding arbitration or alternative dispute resolution methods in circumstances where negotiations over retransmission rights break down and noncarriage occurs, depriving consumers of access to broadcast signals.

Mr. INOUYE. The FCC does have the authority to require arbitration, and I certainly encourage the FCC to consider using that authority if the situation the Senator from Michigan is concerned about arises and the FCC deems arbitration would be the most effective way to resolve the situation.

Mr. LEVIN. I thank my distinguished colleague for his attention to this issue, and for all his hard work on producing this important bill.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

the PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1521

(Purpose: To express the sense of the Senate that cable and television networks and local television stations should establish voluntary guidelines to keep violent commercials out of family programming hours)

Mr. INOUYE. Mr. President, I send to the desk an amendment proposed by Senators LEVIN and SIMON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for Mr. LEVIN (for himself and Mr. SIMON) proposes an amendment numbered 1521.

Mr. INOUYE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Since young children are particularly susceptible to the influence of television;

Since violence depicted on television can have a negative and unusually strong effect on young viewers; and

Since parents who choose to monitor television programs for their children and to avoid their children's viewing acts of violence are limited in their ability to monitor acts of violence depicted in commercials during family programs.

It is the sense of the Senate that cable and television networks and local television stations should establish and follow voluntary guidelines to keep commercials depicting acts or threats of violence out of family programming hours.

Mr. LEVIN. Mr. President, last October I spoke on the Senate floor about a growing concern I and many of my constituents have over the depiction of violence in television comericials during family programming hours.

Violence in commercials is particularly troubling because of its impact on our small children. Parents who wish to avoid exposing small children to violence on television are unable to screen it out of a 30-second commercial, tucked in an otherwise acceptable family program.

Last year we passed the Television Violence Act which permits the television networks to work together to establish guidelines on TV violence. I am particularly concerned about the level of violence that is being permitted in commercials shown during family shows where, despite a parent's best efforts to restrict a child to so-called family type programs, that child, despite a parent's intent, can still be exposed to violence through the commercials that may appear during that programming.

I cited several examples in my October statement, including a commercial on July 25, 1991, for the movie "The Mobsters" which was aired during "The Cosby Show." The commercial depicted a man, who was begging for his life from a man pointing a gun at him, being killed in cold blood. All the young children who were watching "The Cosby Show" were exposed to it.

At that time, I wrote to over ten major and cable network executives urging them to keep violent commercials out of family programming hours. I received a number of positive response, including, by the way, an apology for the Mobsters commercial. NBC stated that that commercial had been shown in error and did not meet their standards. I was glad to hear that.

But, Mr. President, not all the networks have taken the same position, and even some of those who say they have standards have not applied them rigorously or developed adequate standards to do the job.

I should like to read, Mr. President, a letter I recently received from a young man in Royal Oak. This is not a parent expressing concern about what his or her child is watching, although I have had a number of those letters as well. This is more telling, because it is from a young boy who is asking for help.

DEAR MR. LEVIN: My name is ——— I am thirteen years old and I live in Royal Oak, Michigan.

A couple of days ago, I read the article you wrote about in the Free Press. It was about violent T.V. ads. One thing that you noted in the article was how, during a commercial series in between the "Simpsons" there was a ad for Americas Most Wanted". You said that the commercial contained violence. well, I saw that ad. It totally ruined watching the Simpsons. You're right. Those commercials and even T.V. shows can affect kids. I think violence of any kind on T.V. should be banned. Sincerely,

Out of the mouths of babes.

Mr. President, I offer an amendment tonight which is a sense of the Senate resolution that cable television networks and local television stations should pledge to keep violent commercials out of family programming hours.

Acts of violence in commercials are particularly offensive, because they seriously limit a parent's ability to prevent young children from being exposed to them. Even the most attentive parents can find themselves suddenly confronted with a horribly violent act—the cold-blooded murder of a human being—on television during television program otherwise acceptable to them and be unable to keep their children from seeing it. The commercial may be over before the parent realizes what he or she has just witnessed. The damage in that situation is done, despite the parents' intentions.

I am not suggesting that we should legislate in this area, given the legal complexities involved in our constitutional protections of free speech. But it does not strike me as too difficult or inappropriate for the television networks themselves to establish voluntary guidelines by which commercials are screened for very violent acts so they can be aired during non-family-type programming. That is only common sense, and I hope that the television networks will consider embracing such a principal.

Some parents do not object to their young children being exposed to raw violence on television but others care very much. There can be standards for programming that do not unduly restrict commercial speech but allow parents, if they choose, to protect the most impressionable segment of our society, our young children.

Mr. INOUYE. Mr. President, this sense of the Senate resolution has been cleared by all parties. I believe that the intent of the amendment is set forth very clearly in the last paragraph. So if I may read:

It is the sense of the Senate that cable and television networks and local television stations should establish and follow voluntary guidelines to keep commercials depicting acts or threats of violence out of family programming hours.

Mr. President, this measure has been cleared by both sides. I ask for its immediate adoption.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1521) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, I have had a number of concerns about S. 12 since its introduction last year. I share my colleagues' desire to prevent unfair rate hikes, poor service, and monopolistic actions taken by the cable companies. But the resolution of those problems must strike a balance and serve long-term goals.

We have heard many speeches about problems with vertical integration and antitrust violations. We have laws already dealing efficiently with monopolies, and the cable industry should be dealt with no differently than any other industry in this area. Antitrust violations should be handled by the Justice Department. Reregulating the cable industry will only serve as a short-term fix for these problems, and it won't benefit the consumer in the long-term.

Our President has just put a temporary hold on new Federal regulations as part of his program to stimulate the economy. It is ironic that at this same time, some in this Congress would turn to further Government regulation to solve the problems of the cable industry. This Congress should be encouraging growth, not stifling a relatively young industry. I hope that we will see a push to address S. 1200, which is legislation that will encourage growth and the development of competition in the cable industry and alternative providers for programming.

Mr. President, while I have many concerns about S. 12, there are some provisions in S. 12 that I support. For example, the access to programming provisions are important for rural States because they would increase competitive opportunities for promising new technologies such as direct broadcast satellite [DBS] services. Also, retransmission consent is an issue that needs to be addressed. However, as I have already said, these issues are submerged in a bill with shortsighted goals that would regulate the cable industry to the extent of stifling growth. Cable has opened the world to many rural communities, and with competition and new technologies such as DBS, more information and programming will be available to our rural communities—but only if the Federal Government avoids imposing burdensome regulations on the industry.

Mr. President, I don't support unnecessary Government regulation of private industry. Therefore, I don't support S. 12. The best solution to this problem would be to provide consumers with a choice of distributors—local telephone companies, satellite broadcasters, or another cable company.

Mr. MITCHELL. Mr. President, for the past several hours, the managers of the bill and other interested Senators have been involved in discussions in an effort to reach agreement on a procedure to bring about completion of this bill. I have discussed the matter with the distinguished Republican leader earlier this evening, and it is my intention to propound a request for a unanimous-consent agreement in approximately 5 minutes. The request is being drafted.

The Senators who have been most involved have previously been notified by telephone. I assume they are on their way to the Senate floor. If any Senator has an interest in the subject matter of the agreement, which will involve completing action on this bill promptly, that Senator should come to the floor and be present. I expect to propound that agreement at approximately 6:45.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GARN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1522

(Purpose: To provide a substitute)

Mr. GARN. Mr. President, Senator PACKWOOD and Senator STEVENS are not able to be here, but on behalf of Senator PACKWOOD, I send to the desk a substitute amendment to the bill S. 12 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Mr. PACKWOOD (for himself, Mr. KERRY, Mr. STEVENS, Mr. WIRTH, Mr. BURNS, Mr. DOLE, Mr. SHELBY, Mr. RUDMAN, Mr. SIMPSON, Mr. BREAUX, and Mr. FOWLER) proposes an amendment numbered 1522.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. GARN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

CRS PROMOTES DEMOCRACY IN THE RUSSIAN FEDERATION

Mr. PELL. Mr. President, in my capacity as chairman of the Joint Committee on the Library, I call attention to the Senate once again to the continuing historic efforts of the Congressional Research Service of the Library of Congress to assist in the transition to democracy in parts of what was the Soviet Union.

Last October, I reported on the considerable assistance which CRS had been offering, with the approval of the Joint Committee on the Library, to the Supreme Soviet of the then faltering Central Government of the U.S.S.R. As it has turned out, those efforts were a useful prelude to continuing steps to establish what hopefully will become more lasting democratic institutions in the successor states, most notably the Russian Federation.

During 1991, CRS received a number of visits from Russian legislators who recognized that a legislature must have its own direct and independent access to authoritative information and analysis if it is to legislate wisely and act as a restraint on executive power.

At the request of the Presidium of the Russian legislature, CRS Director, Joseph E. Ross, led a delegation to Moscow last October to assess the resources of the Russian Parliament and provide advice on development of a parliamentary library. On his return, Mr. Ross requested approval of the Joint Committee on the Library of a protocol of cooperation between CRS and the Presidium of the Russian Supreme Soviet that provides for exchange of specialists, documents, data bases and reference materials and establishment of direct electronic communications.

I heartily support this proposal, and in my capacity as chairman of the joint committee, was pleased to give my approval of the protocol on January 9, 1992.

Mr. President, the dissolution of the Soviet Union presents great opportunities to the United States and hard challenges to the peoples of the constituent republics of the former union. While our attention is properly focused on the grave problems of conversion to a market economy and on the disposition of the former Union's huge nuclear arsenal, we must remain sensitive to the far reaching opportunities to help build effective democratic institutions on the ashes of the totalitarreality" and so required the guidance and recommendations of experts.

We believe that the developing concept of the Parliamentary Center would benefit greatly if some of those responsible for developing it could have more direct and personal exposure to the principles and practices that characterize CRS assistance to Congress. We are very pleased, therefore, that Dr. Filatov has accepted our invitation to send a small delegation for a working visit to CRS, probably in February 1992. Although the plans for the delegation and its visit have not been completed, we anticipate that it will include some of the deputies and officials who will be primarily responsible for developing the Parliamentary Center and Library.

AUTOMATED INFORMATION RESOURCES

The automation infrastructure of the Russian Supreme Soviet can best be contrasted with that of the Library of Congress. The Library began by developing centralized shared data bases and only recently began distributing computing power to the desktops of users. The Russian Supreme Soviet has begun by distributing local computing power since October 1990 to get the greatest return on the ruble, but has yet to decide on an architecture to support access to central, shared legislative data bases.

Organizational Structure and Support

Automation support for the Russian Supreme Soviet is provided by the Printing and Publishing Department in Dr. Filatov's administrative organization. This department is managed by Deputy Adrov, who also chairs the Supreme Soviet's Subcommittee on Computers and Information Technology. The information technology group has three computer specialists, headed by Mr. Kamenir. The legislature also has called upon the All-Union Research Institute on Automation, a national research institute having no direct counterpart in the United States, to provide consulting services on office automation.

Since January 1990, the parliament has acquired about 300 IBM-compatible desktop computers for the deputies and offices of the Supreme Soviet. These are mostly Intel 80286 technology machines with matrix impact printers used for word processing support of committees and commissions. One local area network based on Novell Netware has been established in the Printing and Publishing Department to assist in producing transcripts of the proceedings of the Supreme Soviet. No institution-wide data communications capability has yet been established. Data bases of legislative, biographical, and administrative information have been established using the commercially available data base package, Foxbase Plus.

Accomplishments and Challenges

After approximately two years of existence, the Russian Supreme Soviet's Automation Center has managed several significant accomplishments. It has acquired approximately 300 IBM-compatible work stations to support document production by committee and commission staff, who have completed basic computer literacy training. The Center also has created a data base of biographies of deputies, and established a full-text data base of all higher-level Soviet laws and sub-law acts since 1922. These data bases were created using software that was never intended to be used for full-text retrieval. It is a case of making do with what is available. In addition, the Center has implemented an electronic voting system for the Supreme Soviet.

Most recently, the Center has participated actively in developing plans for establishing an Informatin and Analytic Center within the proposed Parliamentary Center. This plan envisions the acquisition of a super minicomputer and creation of a network to connect the offices of the committees and commissions.

At the same time, the Automation Center faces a number of challenges in implementing its plans. There needs to be a successful coordination of effort with other institutions, such as the All-Union Institute for Automation, the National Public Library for Science and Technology, and the Lenin Library, all of which hope to become critical components of the legislature's support structure. The Center also seeks access to outside data bases, both ministerial and international, which may be hampered by the poor state of the public telecommunications network. At the same time, it needs to develop a library automation system to support the Parliamentary Library, and to establish reliable high-speed communications between the Parliamentary Center and the White House if, as seems likely, they are located a few kilometers apart. Finally, we anticipate that the Russian legislature eventually will decide to change from a desktop information retrieval system to a centralized one, accessible over a communications network.

UNION SUPREME SOVIET RESOURCES

The demise of the Union Supreme Soviet creates opportunities and possibilities that we cannot yet assess. As of May 1990, the Secretariat of the Supreme Soviet had a staff of more than 800 people who were responsible for administrative and financial matters as well as for most of the legislative and policy support that the Supreme Soviet received. The Secretariat also was engaged in developing an expanded set of relationships with institutes of the Academy of Sciences and other research organizations that could provide complementary expertise. In addition, the Secretariat had been creating its own data base system and had established a functioning reference center near the Supreme Soviet's meeting hall. Following the dissolution of the USSR, the Russian legislature asserted control over all the assets of the Union Supreme Soviet. So the Russian legislature now may be able to take advantage of at least some of these resources.

LIBRARIES AND RESEARCH ORGANIZATIONS

Members of the CRS delegation met with other officials in Moscow, and several CRS staff remained to participate in the joint Library of Congress-Lenin State Library conference. These aspects of our program provided some additional insights into the analytical and information support that the Russian legislature might receive from Moscow's libraries and research institutes.

Soviet speakers at the conference repeatedly emphasized the severity of the financial problems faced by their libraries, including the Lenin Library. During the conference session on "National Library Support for the National Legislature," Soviet participants openly disagreed among themselves about whether the Lenin Library should and could serve as a parliamentary library for either the Soviet or the Russian legislature. Leading officials of the Lenin Library took an affirmative position, but CRS delegation members were told that this view was not generally shared by the Library's staff. The decision to close the Library dramatizes the extent of the Library's problems and suggests how much would need to be done before it is well-prepared to function effectively as a legislative support institution.

Political and budgetary problems also have affected organizations such as the Institute on State Structure and Legislation, which was affiliated with the Union Supreme Soviet. Our delegation was informed that 70 percent of the Institute's budget had come from a Union-level Committee on Science and Technology, which was disbanded in the autumn, with the remaining 30 percent coming from the now-defunct Union Supreme Soviet. In December 1991, CRS received preliminary information that this institute would be re-named and funded by the Russian legislature. Even the Institute for the Study of the U.S.A. and Canada, one of the most prestigious political institutes in the country, is struggling to redefine its mission and secure its budget for the future. This Institute had provided significant support to the USSR Supreme Soviet since that body as revitalized in 1989. More recently, it has begun providing support to the Russian Supreme Soviet as well. It is well qualified to provide analysis of American laws and government, subjects of growing interest to legislators in Moscow. In addition to the expertise of its staff on foreign policy and national security issues.

Mr. FORD. Mr. President, before the distinguished Senator from Rhode Island leaves, I wish to compliment him for the tremendous work he has done on the Joint Committee on the Library of Congress. Ever since I have been on the Rules Committee, I found his dedication and hard work has made some things happen that would not have otherwise happened. I think tonight the report that he is giving, as it relates to the CRS and work at the Library, is important, but it is a continuation of the good things that the Senator from Rhode Island has done.

I wanted the record to reflect my feelings for him personally and compliment him for a job well done.

Mr. PELL. Mr. President, I thank the Senator from Kentucky very much. I would not be chairman if it was not for his good offices and good grace.

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S.12

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the only amendment other than the committee substitute remaining in order to S. 12, the cable bill, be the Packwood substitute; that no motions to recommit the bill be in order; that Senator PACKWOOD or his designee be permitted to modify his amendment within 5 minutes after the Senate resumes consideration of the amendment on Friday, January 31; that when the Senate resumes consideration of S. 12 on Friday, January 31, at 8:30 a.m., there be a time limitation for debate on the Packwood amendment of 3 hours, equally divided in the usual form: that when all time is used or yielded back, the Senate vote on the Packwood amendment; that immediately upon the disposition of the Packwood amendment, the Senate vote on the committee substitute as amended, to be followed by third reading and final passage of the bill, and that the preceding all occur without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered. That during the further consideration of S. 12, the Cable Bill, the only amendment, other than the committee substitute, remaining in order be the Packwood substitute, No. 1522.

Ordered further, That no motions to recommit the bill be in order.

Ordered further, That the Senator from Oregon (Mr. Packwood), or his designee, be permitted to modify his amendment within 5 minutes after the Senate resumes consideration of the amendment on Friday, January 31, 1992.

Ordered further, That when the Senate resumes consideration of S. 12 on Friday, January 31, 1992 at 8:30 a.m., there be a time limitation for debate on the Packwood amendment of 3 hours, to be equally divided in the usual form, and that when all time is used or yielded back, the Senate vote on the Packwood amendment.

Ordered further, That immediately upon the disposition of the Packwood amendment, the Senate vote on the Committee substitute, as amended, to be followed by third reading and final passage of the bill.

Ordered further, That the preceding all occur without any intervening action or debate.

PROGRAM

Mr. MITCHELL. Mr. President, there will be no further rollcall votes this evening.

Pursuant to this agreement just obtained, the Senate will return to consideration of this bill at 8:30 tomorrow morning, at which time there will be 3 hours of debate on the Packwood substitute amendment. There will be a vote on the Packwood substitute amendment, to be followed by adoption of the committee substitute, which I do not believe will require a rollcall vote. And then a rollcall vote on final passage. So there will be two rollcall votes tomorrow, beginning not later than 11:30 a.m., if all time is used; earlier, if time is yielded back.

This agreement does not preclude debate on the Packwood amendment this evening, and I anticipate that there will be debate for such time as Senators wish to address the subject.

Mr. President, I thank my colleagues for their patience. This has taken many hours of negotiation to obtain this agreement, involving a large number of Senators, and I am grateful we are able to do this in a way that will result in final action on this bill at or about noon tomorrow.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I want to express appreciation to Senator MITCHELL, Senator DOLE, Senator COATS, and others who have worked to put together this unanimous-consent agreement. I also want to express my appreciation to Senator GORTON for an amendment which he offered earlier and which was adopted. The importance of that amendment, the Gorton amendment, was that Senator GORTON borrowed from the substitute, the Packwood substitute, the so-called procompetitive aspects of the Packwood substitute.

The history of this legislation has been that, for the more than 2 years since we began consideration of cable television legislation, advocates of the legislation have done all that they can do to reach out to opponents. We have engaged in endless discussion. We have held ourselves available to the cable industry, to members of the administration, to other Senators, to anyone who cared to talk with us about this legislation in an effort to work things out.

Yesterday, I met with representatives of the administration again to explore the possibility of compromise. I must say that those efforts were not met with very much by way of positive response. The position of the opponents of the legislation has been very rigid, very ideological opposition to the cable legislation.

In a further effort to go the extra mile, Senator GORTON has amended the bill itself by incorporating into the bill two provisions from the Packwood substitute. We want to do everything we can to accommodate the opponents of the legislation and to take into consideration some of the ideas of those who have advocated the substitute. That is what we did.

So the bill has been amended. It has been amended to clarify that no provision of the Communications Act prohibits a local or municipal authority that acts as or is affiliated with a franchised authority from operating a cable system or other multichannel video programming distribution system in competition with any cable system franchised by that authority.

And it further amends the bill to provide that local telephone companies are allowed to provide video programming in their service areas in competition with cable systems in areas with up to 10,000 residents.

These are the two procompetitive aspects of the substitute. We have incorporated both of them in the bill. So what is left of the PACKWOOD substitute? What remains of it?

What remains of the PACKWOOD substitute are the anticompetitive aspects of the substitute. With respect to the access-to-programming provision in the bill, the substitute has no such provision. We provide in the bill that a cable programmer vertically integrated with a cable company cannot unreasonably refuse to do business with a competing cable company. We believe that unreasonable refusal to do business with a competitor is a way to shut out competition where there is vertical integration. The substitute deletes that provision.

We provide in our legislation, with respect to horizontal competition, that the FCC is to engage in a rulemaking to provide limitations with respect to horizontal integration nationwide of the cable television industry. Right now, one company, TCI, controls programming for a quarter of the homes in America that have cable service. We think that there is a problem if a single company controls that much access, or more access, to the homes of America.

That provision is deleted in the substitute. In other words, S. 12 advances competition in our country in the cable television business. That provision is deleted from the substitute.

Then, the Packwood substitute repeals the so-called 12-12-12 provision. The 12-12-12 rule limits any entity from owning more than 12 AM radio stations or 12 FM radio stations or 12 television stations. That is the 12-12-12 rule. And the Packwood substitute, without benefit of any hearings, without benefit of consideration by the Commerce Committee, in a matter that is purely extraneous to the substance of the legislation, goes beyond the scope of the legislation and repeals the 12-12-12 rule, providing at least in theory for the total integration of radio and broadcast television throughout the United States.

It would be our position that in these three respects, the Packwood substitute is anticompetitive.

In these three respects, the Packwood substitute provides, in effect, for more concentration in this industry rather than less. That is a very major philosophical difference between the substitute and the bill itself. The administration has argued and others have argued and we have argued, as a matter of fact, that competition is always preferable to regulation. But the substitute is anticompetitive and our bill is procompetition—a big, big difference.

And then with respect to rate regulation, we provide that, in the absence of another multichannel provider, the municipalities should be able to regulate rates. We think that if there is no competition in the provision of multichannel services to the homes of the community, there must be regulation: that the basic concept should be that there should not be unregulated monopolies in the United States. Unregulated monopolies are able to do anything that they darn well please. Unregulated monopolies are able to raise rates as much as they want. There is no competitor to check them and there is no regulation to check them. Unregulated monopolies are able to do, as described by the Wall Street Journal 3 days ago, what TCI has done. Unregulated monopolies are able to engage in predatory practices, snuffing out competition. Unregulated monopolies do what TCI did and put $140-some-odd thousand into a major race in a small community in order to defeat the local political people. That is what happens when we have unregulated monopolies. And we say in our rate regulation provision that, if there is no competition, then the municipalities should be able to regulate.

By contrast, the Packwood substitute drastically cuts back on the regulation provision and provides that the regulation can only occur for that tier of programs that is subscribed to by only 10 percent of the people of this country, this very low, baseline tier. Only 10 percent of the cable subscribers subscribe to only that. And, in effect, the Packwood substitute would codify the evasiveness of the cable companies in retiering their services, which has been going on in recent times in order to escape the prospect of regulation.

Those then, Mr. President, are the basic differences between the Packwood substitute and the bill before us. The substitute does gut the bill. And, in a memorandum written recently by the head of the National Cable Television Association, Mr. Jim Mooney, anybody who reads that memorandum would recognize that the whole thrust of the substitute is really a gambit, really a ploy in order to defeat the legislation.

The bill itself has been described by the Consumer Federation of America, as the most important consumer legislation of this year. That is what it is. Anybody who is a Member of the U.S. Senate who travels to his or her State—it certainly is true in the case of my State—anybody who travels to a community like Hannibal or Cape Girardeau or Jefferson City knows that one of the first questions that will be asked is, What are you going to do about cable television? What are you going to do about the abuses of cable television? What are you going to do about the monopoly power of cable television? If we adopt the substitute, the answer is "virtually nothing," just adopt cover, flimsy cover. If we want to act, we have to reject the substitute and we have to agree to the bill.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. INOUYE.

Mr. INOUYE. Mr. President, I ask unanimous consent that Senators LEAHY and GLENN be added as cosponsors of S. 12.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, I begin by thanking Senator DANFORTH, Senator INOUYE, and Senator MITCHELL for their patience in waiting for us to begin talking about the substitute. It had been my desire to proceed earlier, and I regret that has not been possible. I am pleased that we are now operating under an agreement. We will be able to proceed.

There are a lot of tall tales out there on the issue of cable television, an awful lot of confusion. It is a very complicated subject which, unfortunately, lends itself very easily to a certain amount of easy distortion about what has happened to prices, why it has happened, and where it all started. And, I suppose that, in the end, the only really important thing from a political perspective is that people sit and they look at their cable monthly bills. People look at the bill and say why am I paying this much? What has happened here?

The Congress has had a bad habit of regulating the communications industry in a piecemeal fashion. That has been a luxury that was afforded us from the 1930's on because of the nature of the communications industry in this country. It has been divided into neat segments: Newspapers, radio, television, and telephones.

But in the 1990's, there is not anything that remotely resembles those early days. It has changed so dramatically that there is now an interlocking network of relationships between the movie industry, broadcast industry, radio industry, cable industry, telephone industry, and the newspaper industry. They are all vying for a piece of the media pie.

Frankly, in my judgment the Congress does not really have a well-formed idea where it is going in terms of an overall communications structure for the United States. There is movement to create a fiber optic infrastructure; the telephone companies by a judge's order are now going to be providing information services. The telco's are going to fight to get into cable. In fact, we are going to let them have a little chunk in this legislation. In addition, you have the financial syndication rules: the fighting over programming, over who gets it, who owns it. And on and on you go. It is confused and confusing.

But Congress is still looking at this in an outdated fashion, looking at it as we regulated it in the past. I think we have to stand back and look at this cable legislation with a note of reality, look hard at the real figures about investment, at the profits, at the changes in the industry, and where we want to wind up in the future.

I heard the distinguished Senator from Missouri a moment ago say that the substitute legislation is nothing more than a cover. I think the words he used were, and I quote him, "It does virtually nothing." "Virtually nothing," he said. It is a little ironic that the managers have already borrowed two sections of our substitute to place in their amendment. If it did "virtually nothing," they have seen fit to take two pieces of nothing and put it into their bill. So obviously it does something, something that satisfied them enough that they sought to pull away some of the support from this measure.

Let us look at whether or not it really does nothing and look hard at the difference between this piece of legislation, the substitute, and what is being offered by the distinguished chairman of the committee and others.

People have asked me, Senator KERRY, why are you offering this substitute? You have a 100-percent consumer record. The consumer lobby wants the bill approved by the committee. Why are you doing this?

I will make it very clear why I am doing it. I am doing it because I believe that consumers are going to be best served by passing legislation that can get the President's signature and become law. It has already been made clear that S. 12 will not become law, that the President will veto it and that there are sufficient votes to sustain that veto. That is my No. 1 reason.

The second reason: In this country we talk and talk about competition, about creating jobs, about investment. It is my personal belief that if you want to create jobs, if you want to encourage investment, if you want to have competition, and if you want to foster more research and development in the creation of new products, then think hard about how we regulate. We do not want to bring the cable industry to the point where the phone companies now are. The phone companies are so regulated that we now are trying to find out how we can make them competitive again by reducing some of the regulation to which they are subject.

Also, I ask colleagues to think philosophically about what we are doing. I believe cable needs regulation. Have there been abuses? Yes, there have. The substitute we are offering does regulate, but it does not strangulate. It regulates cable at an appropriate level while sustaining the industry's capacity to invest in the new technologies, the infrastructure, and the development of programming that will benefit consumers.

Now, it strikes me that nothing could be more important to us in the effort to write cable legislation than to try to foster that kind of competition and investment. The very kind of innovation that has produced CNN, HBO and C-SPAN, all of those services that we find valuable today, came precisely because people were able to take a risk and go out and invest.

But, S. 12 is going to take away that kind of incentive because it not only will over-regulate subscriber rates but it also will force cable to sell to its competitors the very programs in which it invests.

If I were out there in the marketplace considering entrepreneurship in the cable industry, I would say to myself, what am I doing? I am going to have to grind my way through the local franchising process, grind my way through the FCC rules, and then the Government is going to tell me exactly how much money I am going to be able to receive. Then, on top of that, I have to turn around and give my programming to my competitors so that they can go into the market and beat me. That is not a terrific investment prospect.

What happened to the philosophy in this country about keeping Uncle Sam out of people's private choices? We are talking about entertainment. We are not talking about essentials. We are not talking about gas. We are not talking about water. We are not talking about electricity. These are true monopolies which are regulated because they are necessities. We are talking about the Playboy Channel. We are talking about Showtime. We are talking about HBO. The movies.

People make choices every day about how much they want to spend to go to the movies. I went to the movies the other night. And to take my two kids to the movies, buy the popcorn, and pay for parking, we hit $30 in one night. Here we are talking about extraordinary packages of many channels for the cost of less than that. And, you get it night after night, day after day, 24 hours a day, for the entire month.

You also have competition. You can decide you want to go to the cinema. You can decide that you want to rent a movie and pay $2.50 or $2.75 and, as most people do, you can forget to take it back the next day, and wind up paying 5 bucks for one movie to watch on the video recorder. That is a kind of competition.

But those of us offering this substitute have decided that it is not effective competition. So we regulate across the board.

I would like to ask how it is that we suddenly get this notion that we have to tell the citizens in America they are not smart enough to decide whether to buy something that is entertainment, pure entertainment.

My colleague from Missouri says that our alternative does virtually nothing. Let me tell you precisely what the alternative does.

No. 1, we regulate service and rates. I would like to remind my colleagues this entire cable debate is really about service and rates. Citizens who have been angry about cable are not angry about the wholesale distributors complaining about the prices they have to pay for programming. No, our constituents are worried about their bill at home. They are not worried about the struggle between the broadcast industry and the cable industry. They are worried about their bills at home, and about the lack of service, and the lack of standards for that service.

In this substitute, we do exactly what they do in S. 12 concerning customer service. We regulate all cable customer service in the same fashion. We direct the FCC to set standards for customer service, and we permit States to enact laws that establish service standards that exceed the FCC's.

That is tough, and that is regulatory. That is one of the reasons why the cable industry does not like the substitute.

We also regulate rates. And, just as S. 12 does, we change the FCC definition of effective competition so that it is no longer six terrestrial signals that provide effective competition. Our substitute defines effective competition as the presence of another multichannel provider. And, in any area where there is not effective competition by that definition, which covers about 99 percent of America, our substitute will impose rate regulation. We will regulate rates for a tier of service that includes all over-the-air broadcast stations, the access channels, and C-SPAN. In addition, to that, the FCC will regulate the rates for installation or rental of equipment.

Our substitute, just as S. 12, requires the FCC to establish minimum technical standards for all classes of video programming, and those standards preempt all other standards. Home wiring also is covered. Our alternative, just as S. 12, requires the FCC to prescribe rules concerning the disposition of any cable installed within a subscriber's premises upon the termination of cable service.

In addition, our alternative requires the FCC to provide to the Congress on an biennial basis a report on the state of competition within the video marketplace. That report is required to include recommendations on the issues of vertical and horizontal concentration.

With respect to multiple franchises, our alternative, just like S. 12, states that local franchising authority may not unreasonably refuse to award a second franchise. It also clarifies that nothing prohibits a local or a municipal authority from operating a system that competes with a cable system that has already been franchised by that authority.

Our substitute gives local franchising authorities more power and more flexibility in the renewal negotiations with cable operators. It clarifies procedures and deadlines in the renewal negotiation process. It allows the franchising authority to include, as part of a franchise renewal provision, a section that would permit the franchising authority to begin the renewal negotiation process in the 6th month following the 10th year of the current franchise term, no matter what the length of that franchise term was.

This will allow a franchising authority to express concern about the performance of the cable operator in a concrete manner by accelerating the renewal process.

Our substitute requires that new DBS systems—that is, direct broadcast satellite systems where consumers receive programs directly from satellites by means of dish antennas—that these systems reserve 4 to 7 percent of their channel capacity for public interest programming at a reasonable cost.

The managers of S. 12 have added to the committee bill the rural telephone exemption in our substitute which says that in rural areas with populations under 10,000, we will allow the telephone companies to provide video programming.

Broadcasters frequently have complained: Look, cable is taking our free over-the-air broadcast signals, and they are using them as part of the bait by which they bring in subscribers. That is part of their marketing power. We agree. It is.

So we do precisely what S. 12 does, which is to require the retransmission consent must-carry choice, which allows a local broadcaster to choose. Either they can have mandatory carriage or they have the right to deny the local cable system the ability to carry the signal unless a carriage agreement is negotiated. This will assure the broadcasters will realize some of the fair market value for the product that they are creating.

Certainly this provision will strengthen cable's broadcast competitors, and in doing so, it will improve service to consumers.

It should be acknowledged that there is some concern that the implications of retransmission consent are not completely understood. In fact, I am concerned that copyright holders will not necessarily have access to the negotiations between cable firms and the broadcastors. But I believe this is something that can be worked out in this legislation before it reaches the point of being signed into law.

I have just outlined a whole series of provisions on rates, technical standards, service, must-carry, rural telephony; et cetera. The substitute amendment establishes strong regulation in each of those areas where S. 12 also establishes regulation.

Mr. President, no industry in the United States of America has changed more in the last few years from the communications industry. I ask colleagues to consider what has happened in this industry as they make a judgment about the degree of regulation they want to impose.

You cannot just look at this and say, "some people in my State are unhappy because they are required to pay for a service they choose to get." You have to measure what is happening in the industry and what is happening in other industries against those charges, and then make some judgments.

I ask my colleagues to think about what the communications industry was like just 10 years ago. For most Americans, television consisted of three networks, a few local independent channels and PBS. The networks reached 99 percent of all homes in the United States and they had a 95-percent share of viewing. They used this monopoly to control the video marketplace and to earn vast profits.

The average pretax profit for commercial broadcast stations in 1980 was $2.28 million. Their power over the airwaves was so great that the FCC established the financial syndication rules to keep the networks from exerting too much control over the producers of programming. But, the FCC had no competitive alternative with which to fashion a competitive marketplace. Virtually no one had a VCR in 1980. Blockbuster Video did not exist. Cable penetrated only 1.1 percent of all TV households. In two-thirds of these households, only 6 to 12 channels were offered. The principal appeal of cable at that point was simply that it enhanced reception.

There was no minute-by-minute coverage of the Iran hostage crisis because CNN did not exist. There was no gavel-to-gavel coverage of Congress because C-SPAN did not exist. There was no Bart Simpson because the Fox Network had not even been created.

Paralleling this network monopoly in for television was the Bell monopoly in telephones. Remember that it was not until 1984 that the Bell Telephone System was broken up. And in 1980, most of us still had rotary dial telephones. We paid our entire telephone bill to one company—the old AT&T. Cellular telephones were still associated with "Dick Tracy," and call waiting had not yet been conceived. There was no connection between television, telephones, radio, and computers.

When we watched TV we turned on the networks. When we talked on the telephone, we spoke on the Bell System. When we made calculations, we switched on a mainframe computer. When government regulated, a separate and distinct decision was made for each industry within the media and each communications area. Each industry operated comfortably by a set of regulations that, for the most part, were written in 1934.

The telephone industry was regulated according to a common carrier model; the television and radio industries, according to the spectrum licensing regime; the newspaper industry, according to the first amendment; and, the computer industry was not regulated at all according to media rules.

I think people must be reminded of this history because of the dramatic changes that have taken place in the last 10 years.

Today's world of media and communications makes 1980 look like ancient history. Rapid technological advances have pushed the industry far beyond recognition. It seems to me that one must acknowledge the fact that today's viewers can choose among the same over-the-air channels that existed 10 years ago, but also from a whole set of new alternatives.

Cable now serves 56.4 percent of American TV households and offers two-thirds of these households 30 or more channels. While viewers once scoffed at the quality of these channels, they no longer are downplaying them but instead are tuning into them. VCR's are in 62.8 million homes in America, 68.2 percent of the total TV households. Many viewers are also receiving television via satellite, microwave signals, home satellite dishes, and so forth. There are now 350,000 wireless subscribers and 2.9 million satellite home dish owners.

As we try to rein in the cable industry, which virtually all of us agree must be done, we ought to do it with some sensitivity to what is coming over the horizon, because a lot is coming over the horizon.

There are already many proposals for DBS or direct broadcast satellite service. In fact, two satellites are up and another satellite is on it's way. This means that within a short span of time, an American citizen can go out and buy a dish about 18 inches wide, put in his or her home, and pick up over 200 channels. That service will compete head-on with cable. And that is an important future consideration, as you think about denying cable the amount of investment necessary to build an infrastructure.

The most interesting new delivery system is going to be the telephone itself. Last November, the FCC ruled that telephone companies will be allowed to transmit video programming on a common carrier basis. This ruling has enormous impact on the video marketplace since, with some additional investment, the telephone companies will be able to carry to their customers programmers' alternative packages over the telephone lines. We are soon going to be able to access movies, and whatever other programs, we want through the phone company. That is competition.

What are we doing? We are saying, "No, we are going to react now. We are going to over react now, because some people are complaining about the bills."

While all of this is happening, the terrestrial broadcasters are making advances. High definition television is right around the corner. Once it is developed, conventional signals are going to have phenomenally better clarity. Furthermore, compression techniques are going to allow the creation of a whole new set of terrestrial channels.

This new world of video service is mirrored by telephone service and other communications services. New technologies are allowing companies to build telephone networks that bypass the local carriers—the telephone companies. Radio technologies are creating entirely new products, like cellular telephones.

I repeat: If we as a Congress are really serious about competition in America, and if we want to compete with Siemen's and Alcatel, and if we want to be the purveyors of an extraordinary communications network in the future, we should not approach in a piecemeal fashion, and blindly modify the entire structure of the communications industry in this country.

But, in fact, that is exactly what we are doing. And, I believe we will strip away the incentive for cable to invest in infrastructure development. We will also have interfered in an industry-to-industry battle between phone companies, the broadcasters, and the cable industry, in a way that is not going to benefit the consumer.

The substitute we are proposing will regulate 70 percent of what the American cable subscriber watches. Why? Because 70 percent of what the American cable subscriber watches is over-the-air broadcasts.

That means that even though cable comes into the home with a package of channels, people are watching the broadcast signals. They are choosing that. In this alternative, we are regulating the price of these signals in 99 percent of the cable markets in the United States.

I believe that consumers will be the beneficiaries of this substitute. I believe this because it regulates rates, it regulates service, it regulates technical standards, and it lets phone companies serve in rural areas. It regulates prices of installation, remote controls, and repair. It does all the things S. 12 does that are important to consumers. However, it remains sensitive to the functioning of free market economics with the objective of assuring continued and increasing high quality in the cable services available to subscribers.

It is also very important to be mindful of the employment generated by cable. Thirty-four thousand employees in 1980 mushroomed to 103,000 in 1990. Literally thousands of jobs have been created for Americans by this industry. I believe that if we enter into this struggle between these various forces, if we go beyond the regulation of basic package rates and service, we will be destroying the ability of yet another American industry to remain competitive. Congress will once again have overreacted.

Now, some people say, "Look at the way the prices have gone up. They went up 1,000 percent. Isn't that just awful?" Indeed, they went up 1,000 percent in Boston, MA, between 1975 to 1988 or 1989. Why? I will tell you why. Because in the 1970's when the cable providers submitted their bids to the local franchising authority, there were so many requirements placed on the bidders that they all submitted unrealistically low bids. So the winner got the Boston franchise for about $1.50 per month per subscriber. Then they realized that there is no way you can put the service in for $1.50. So along came price increases. And an increase from $1.50 to $15.00 is, indeed 1,000 percent. The franchising process forced a lot of that.

But the vital question is what are you getting for what you are paying? In America in 1986, when we stopped regulating cable, the average price for a month's cable subscription per channel was 44 cents. Today the cost per channel is 53 cents. That rate of increase is considerably lower than the rate of inflation on a cost per channel basis.

Moreover, the price in 1986 was artificially low to begin with: from 1972 until 1986, cable television rates were 72 percent behind the rate of inflation because they had been constrained until then by regulation. Of consequence to consumers is the fact there had not been much innovation and investment because the revenue would not afford it.

In the last 4 years since deregulation, cable profits have actually gone down. In fact, the amount of money that has gone into basic programming has gone from $234 million in 1983 to about $1.4 billion today. That is precisely what is creating the jobs in this industry.

I hope that people will not be intimidated by the complaints about cable bills. Unquestionably, there are some problems. We also acknowledge that there have been occasions where companies have unfairly impeded programmers from selling their programs to cable systems. But there are antitrust laws on the books that cover such abuses. Such practices are against the law. And the perpetrators should be held accountable. This system does work. For example, Viacom sued Time-Warner over exactly this kind of issue.

In conclusion, Mr. President, there is a significant relationship between government regulation and investment. We have learned about it before. We have regulated and then we have deregulated and then reregulated what was deregulated. We are doing it now. The question we should be asking is not whether we should or should not regulate, but how much regulation is needed and what kinds of regulation will protect consumers and contribute to providing them with the best service and highest quality programming.

As the Congress debates this question, I fervently hope it will not once again overreact and strangulate an industry as it attempts to respond to a legitimate need.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WELLSTONE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

BIENNIAL REPORT OF THE INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE—MESSAGE FROM THE PRESIDENT—PM 102

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

Pursuant to the provisions of section 108(b) of Public Law 98-373 (15 U.S.C. 4107(b)), I transmit herewith the Fourth Biennial Report of the Interagency Arctic Research Policy Committee (February 1, 1990, to January 31, 1992).

GEORGE BUSH.

THE WHITE HOUSE, *January 30, 1992.*

MESSAGES FROM THE HOUSE

At 11:49 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1989) to authorize appropriations for the National Institute of Standards and Technology and the Technology Administration of the Department of Commerce, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3866) to provide for the designation of the Flower Garden Banks National Marine Sanctuary.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3512. An act to direct the Secretary of Transportation to dispose of certain vessels in the National Defense Reserve Fleet.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 268. A concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3866.

The message further announced that pursuant to the provisions of section 5503(b) of Public Law 100-297, the Speaker designates the following as members of the Advisory Committee of the White House Conference on Indian Education on the part of the House: Representatives BARRETT, CAMPBELL of Colorado, MILLER of California, and FALEOMAVAEGA: and from private life: Ms. Melvina Phillips of Huntsville, AL, Ms. Anita Bradley Pfeiffer of Window Rock, AZ, Mr. Leroy N. Shingoitewa of Tuba City, AZ, Ms. Jane B. Wilson of Flagstaff, AZ, Ms. Theresa Natoni Price of Mesa, AZ, Ms. Isabelle Deschinney of Window Rock, AZ, Mr. Jack C. Jackson of Window Rock, AZ, Mr. Grayson Noley of Scottsdale, AZ, Mr. Dean C. Jackson of Chinle, AZ, Mr. Mitchell Burns of Scottsdale, AZ, Mr. Matthew Levario of Scottsdale, AZ, Ms. Kathryn Stevens of Phoenix, AZ, Mr. Gilbert Innis of Phoenix, AZ, Ms. Linda S. Santillan of Fremont, CA, Mr. Orie Medicinebull of Auberry, CA, Ms. Peggy Ann Vega of Bishop, CA, Mr. Monty Bengochia of Bishop, CA, Ms. Debra Echo-Hawk of Boulder, CO, Ms. Josephine M. North of Hollywood, FL, Mr. Billy Cypress of Miami, FL, Mr. Adrian Pushetonegua of Tama, IA, Mr. Terry D. Martin of Franklin, LA, Mr. Thomas G. Miller of Cooks, MI, Mr. John Hatch of Sault Ste., Marie, MI, Ms. Sharon Kota of Port Huron, MI, Mr. Paul Johnson of Haslett, MI, Ms. Pam Dunham of East Lansing, MI, Mr. Donald E. Wiesen of Cloouet, MN, Ms. Rosemary Christensen of Duluth, MN, Ms. Donna L. Buckles of Poplar, MT, Mrs. Karen Cornelius-Fenton of St. Ignatius, MT, Ms. Bernadette Dimas of Poplar, MT, Ms. Tracie Ann McDonald-Buckless of Ronan, MT, Mrs. Janine Pease-Windy Boy of Lodge Grass, MT, Ms. Jean Peterson of Las Vegas, NV, Mr. Joseph Abeyta of Santa Fe, NM, Ms. Genevieve R. Jackson of Kirtland, NM, Mr. Paul Tosa of Jemez Pueblo, NM, Ms. Mary T. Cohoe of Pine Hill, NM, Mr. Melvin H. Martinez of Espanola, NM, Mr. William A. Mitchell of Bombay, NY, Ms. Michele Dean Stock of Great Valley, NY, Mrs. Betty Jane Mangum of Ra-

SENATE JOINT RESOLUTION 243

At the request of Mr. KASTEN, the names of the Senator from California [Mr. SEYMOUR], the Senator from Louisiana [Mr. BREAUX], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Joint Resolution 243, a joint resolution to designate the period commencing March 8, 1992 and ending on March 14, 1992, as "Deaf Awareness Week."

SENATE RESOLUTION 246

At the request of Mr. DOLE, the names of the Senator from Oklahoma [Mr. BOREN] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of Senate Resolution 246, a resolution on the recognition of Croatia and Solvenia.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the names of the Senator from Maryland [Mr. SARBANES], the Senator from Wisconsin [Mr. KOHL], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

SENATE CONCURRENT RESOLUTION 88—RELATIVE TO ARMENIA

Mr. LIEBERMAN (for himself, Mr. DOLE, Mr. SIMON, and Mr. SEYMOUR) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 88

Whereas for decades, the Government of the Union of Soviet Socialist Republics maintained order and the allegiance of the former Soviet Republics by means of intimidation and physical force;

Whereas for decades, the United States Government has sought to promote democracy, free market economics, and respect for human rights in Eastern Europe and the Soviet Union;

Whereas in February 1988, the Armenian people engaged in mass public protests against their oppressive communist government, thereby creating a model for the other anticommunist protest movements throughout Eastern Europe and the Union of Soviet Socialist Republics;

Whereas the Armenian protests and similar protests have caused the collapse of communism in Eastern Europe, the dissolution of the Union of Soviet Socialist Republics as a nation-state, and the liberation of millions of people;

Whereas on September 21, 1991, the people of the Republic of Armenia, in a national referendum monitored by international observers, voted overwhelmingly in favor of their independence from the Central Soviet Government;

Whereas on October 16, 1991, the Republic of Armenia held its first free multi-party democratic election;

Whereas the Armenian people elected Leon Ter-Petrosyan to serve as the independent republic's first president; and

Whereas the Government of the United States formally recognized and extended full diplomatic relations to the Republic of Armenia on December 25, 1991: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) congratulates the people of Armenia on achieving national independence and for successfully conducting free and fair democratic elections;

(2) congratulates President Ter-Petrosyan on his election as the first president of the independent Republic of Armenia;

(3) commends President Bush for recognizing the independence of and extending full diplomatic relations to the Republic of Armenia, and for supporting Armenia's applications to join international organizations, including the United Nations; and

(4) urges the President to pursue all other political and economic opportunities to strengthen the special relationship between the United States and Armenia.

● Mr. LIEBERMAN. Mr. President, last year I introduced a resolution congratulating President Ter-Petrossian for becoming the first democratically elected president of Armenia and urging President Bush to recognize Armenia and extend to it full diplomatic relations. I am pleased that President Bush declared his intentions to establish diplomatic relations last December, and I hope that an exchange of ambassadors will take place as soon as possible.

Armenia deserves full diplomatic ties. In February 1988, the Armenian people led one of the first uprisings against Communist authorities. This revolt served as an inspiration for the peoples of Central Europe later in the year. Armenians have also elected one of the most impressive leaders to have emerged from the former Soviet Union in the person of President Ter-Petrossian. Under President Ter-Petrossian, Armenia has established a regime based on human rights and economic reform.

I would now like to add a clause to the original resolution, which urges the President to pursue all other political and economic opportunities to strengthen the special relationship between the United States and Armenia. The Armenian people have undergone major suffering in recent years. Five hundred thousand Armenians lost their homes in the earthquake on December 7, 1988. As if the earthquake was not enough, a second tragedy was visited upon Armenians living in Azerbaijan, who have been attacked by militant Azeri nationalists. As many as 300,000 have been forced to flee to Armenia, thereby adding to the economic deprivation there.

Finally, Azeris have been blocking the rail, train, and gas lines to Armenia. This has forced Armenians to attempt to import goods through Georgia, although only modest amounts of food and gas can be purchased in this fashion. So while the Berlin Wall has come down, another wall of ethnic intolerance has been constructed around Armenia. We must increase our shipments of food, medicine, and clothing to Armenians and intensify our diplomatic efforts to lift the blockade of Armenia. This resolution, which I am introducing today with Senators DOLE, SIMON, and SEYMOUR is intended to express the Senate's desire to take a strong stand in support of Armenia.●

AMENDMENTS SUBMITTED

S. 12

CABLE TELEVISION CONSUMER PROTECTION ACT

BINGAMAN (AND BYRD) AMENDMENT NO. 1511

Mr. BINGAMAN (for himself and Mr. BYRD) proposed an amendment to the bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, as follows:

On page 116, between lines 14 and 15, insert the following:

SEC. . Section 611 of the Communications Act of 1934 (47 U.S.C. 531) is amended by adding at the end thereof the following:

"(g) INSTRUCTIONAL USE.—

"(1) For purposes of this section, a cable operator acquiring or renewing a cable system franchise after January 1, 1992, shall be required to have at least 1 channel designated for instructional use. In any case in which a cable operator of a cable system, after January 1, 1992, adds an additional 10 or more channels to that system, such operator shall be required to designate at least 1 of such additional channels for instructional use.

"(2) For purposes of this section, 'instructional use' means a use which provides information or instructions of such a nature that can be integrated with elementary, secondary, vocational/technology or postsecondary curricula, or can be used for professional staff development and training.

"(3) No cable operator shall be permitted to delete from the cable system of such operator any signal of a noncommercial educational television station for the purpose of complying with the provisions of this subsection.

"(4) Within 180 days following the date of the enactment of this subsection, the Commission shall issue such regulations as may be necessary to carry out this subsection.".

BROWN AMENDMENT NO. 1512

Mr. BROWN proposed an amendment to the bill S. 12, supra, as follows:

On page 103, line 23, immediately after "the", insert "foregoing".

On page 103, after line 24, add the following:

"(g)(1) Notwithstanding any other provision of this Act, the Commission shall, within 18 months following the date of the enactment of this subsection, promulgate regulations, consistent with the requirements of this subsection, authorizing any cable operator to apply for an exemption from the requirements of subsections (a) through (f).

"(2) Regulations required by paragraph (1) of this subsection shall provide that a cable operator for any system be exempt from the requirements of subsections (a) through (f) at such time as, and provided that, such operator establishes, by such means as the Commission shall prescribe, that there is available for use for each television receiver maintained by each subscriber of such operator a device which permits the subscriber to change readily among all video distribution media with no differential in convenience among the video distribution media.

"(3) Regulations pursuant to paragraph (1) shall provide, among other things—

"(A) for exemptions in accordance with this subsection,

"(B) technical and operating requirements for the device referred to in paragraph (2) of this subsection, and

"(C) for implementing the provisions of section 303(s) of this Act.

"(4) Nothing in his subsection shall be construed to require a subscriber of any cable system to acquire any device referred to in paragraph (2), or to prohibit any such subscriber from acquiring any such device from a source other than the cable operator.

"(5) The device referred to in paragraph (2) shall be made available by a cable operator providing cable services to a system to the subscribers of that system at a nominal charge, and as a part of the basic tier of service.

On page 91, line 8, immediately after "switch", insert a comma and the following: "or other comparable device,".

On page 91, line 9, immediately after the comma, insert "with no differential in convenience among the video distribution media,".

HELMS AMENDMENT NO. 1513

Mr. HELMS proposed an amendment to the bill S. 12, supra; as follows:

At the end of the amendment, add the following new section:

CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

SEC. . (a) Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)), is amended by:

(1) inserting after the words "franchising authority", the words "or the cable operator", and

(2) inserting immediately after the period at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.".

(b) Section 612 of the Communications Act of 1934 (47 U.S.C. 532), is amended by inserting at the end the following new subsection:

"(i)(1) Within 120 days following the date of the enactment of this subsection, the Federal Communications Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Federal Communications Commission regulations and which cable operators have not voluntarily prohibited under subsection (h) of this section, by:

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section, and

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing, and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Federal Communications Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).".

HELMS (AND OTHERS) AMENDMENT NO. 1514

Mr. HELMS (for himself, Mr. THURMOND, and Mr. COATS) proposed an amendment to the bill S. 12, supra, as follows:

At the appropriate place, add the following new section:

CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

SEC. . (a) Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)), is amended by:

(1) inserting after the words "franchising authority", the words "or the cable operator", and

(2) inserting immediately after the period at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.".

(b) Section 612 of the Communications Act of 1934 (47 U.S.C. 532), is amended by inserting at the end the following new subsection:

"(i)(1) Within 120 days following the date of the enactment of this subsection, the Federal Communications Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Federal Communications Commission regulations and which cable operators have not voluntarily prohibited under subsection (h) of this section, by:

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section, and

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing, and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Federal Communications Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).".

FOWLER (AND WIRTH) AMENDMENT NO. 1515

Mr. FOWLER (for himself and Mr. WIRTH) proposed an amendment to the bill S. 12, supra, as follows:

On page 116, between lines 14 and 15, insert the following:

SEC. . (a) Within 180 days following the date of the enactment of this section, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

HELMS AMENDMENT NO. 1516

Mr. HELMS proposed an amendment to the bill S. 12, supra, as follows:

At the end insert the following:

SEC. . (1) Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by (a) striking the period and (b) adding at the end the following: "unless the program involves obscene material.".

THURMOND (AND OTHERS) AMENDMENT NO. 1517

Mr. THURMOND (for himself, Mr. DECONCINI, Mr. HELMS, and Mr. COATS) proposed an amendment to the bill S. 12, supra, as follows:

At the appropriate place in the amendment, add the following:

The Congress finds that—

the physical attributes of the broadcast medium are such that it is reasonable to assume that minors are likely to be in the broadcast audience during most of the broadcast day;

based on contemporary community standards, there is concern over a growing number of television broadcast programs which at times constitute indecency;

there are instances in network broadcast television programming which involve the depiction of sexual activity directly or by innuendo which is patently offensive under contemporary community standards;

broadcast television programs that depict sexual matters in ways which are obscene, indecent, or profane erode our sense of traditional American values; and

the three major networks have reduced or eliminated their "Standards and Practices" departments which have traditionally reviewed programming for objectionable material: Now, therefore,

It is the sense of the Congress that the television networks and producers should increase their activity to monitor and remove offensive sexual material from their television broadcast programming.

METZENBAUM AMENDMENT NO. 1518

Mr. METZENBAUM proposed an amendment to the bill S. 12, supra, as follows:

At the end of the Committee substitute, add the following:

SEC. 24. APPLICABILITY OF ANTITRUST LAWS.

(a) NO ANTITRUST IMMUNITY.—Nothing in the Cable Television Consumer Protection Act of 1991 shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

WALLOP AMENDMENT NO. 1519

Mr. WALLOP proposed an amendment to the bill S. 12, supra, as follows:

On page 116, strike out lines 20 through 26 and insert in lieu thereof the following:

REPORT; EFFECTIVE DATE

SEC. 23. (a)(1) Within 90 days following the date of the enactment of this Act, the Federal Communications Commission shall carry out a study for the purpose of conducting an analysis of the impact of the implementation of all rules and regulations required to be issued or promulgated by this Act, and the amendments made by this Act, on employment, economic competitiveness, economic growth, international trade, consumer welfare gained through curtailing monopoly practices of cable companies, and increased opportunities for small businesses and other entrants into the video marketplace to compete with cable.

(2) Such analysis shall also consider the extent to which, if any, the implementation of such rules and regulations would involve the States and political subdivisions thereof, in such implementation and the costs, if any, in requiring such States and subdivisions to assist in carrying out such implementation.

(3) The results of such study shall be reported to Congress within 180 days following the date of the enactment of this Act.

GORTON AMENDMENT NO. 1520

Mr. GORTON proposed an amendment to the bill S. 12, supra; as follows:

At the end, add the following:

EXPANSION OF THE RURAL EXEMPTION TO THE CABLE-TELEPHONE CROSS-OWNERSHIP PROHIBITION

SEC. 24. Section 613(b)(3) of the Communications Act of 1934 (47 U.S.C. 533(b)(3)) is amended by striking "(as defined by the Commission)" and inserting after the period the following: "For the purposes of this paragraph, the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof: or

"(B) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of the enactment of the Cable Television Consumer Protection Act of 1992.".

NO PROHIBITION AGAINST A LOCAL OR MUNICIPAL AUTHORITY OPERATING AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR

SEC. 25. Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by inserting "and subsection (f)" before the comma in paragraph (b)(1) and by adding the following new subsection at the end thereof:

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.".

On page 113, line 1, insert "may not grant an exclusive franchise and" immediately after "authority".

LEVIN (AND SIMON) AMENDMENT NO. 1521

Mr. INOUYE (for Mr. LEVIN, for himself and Mr. SIMON) proposed an amendment to the bill S. 12, supra, as follows:

Since young children are particularly susceptible to the influence of television;

Since violence depicted on television can have a negative and unusually strong effect on young viewers; and

Since parents who choose to monitor television programs for their children and to avoid their children's viewing acts of violence are limited in their ability to monitor acts of violence depicted in commercials during family programs,

It is the sense of the Senate that cable and television networks and local television stations should establish and follow voluntary guidelines to keep commercials depicting acts or threats of violence out of family programming hours.

PACKWOOD (AND OTHERS) AMENDMENT NO. 1522

Mr. GARN. (for Mr. PACKWOOD, for himself, Mr. KERRY, Mr. STEVENS, Mr. WIRTH, Mr. BURNS, Mr. DOLE, Mr. SHELBY, Mr. RUDMAN, Mr. SIMPSON, Mr. BREAUX, and Mr. FOWLER) proposed an amendment to the bill S. 12, supra, as follows:

In lieu of the matter to be inserted the following:

TITLE I—SHORT TITLE, FINDINGS, STATEMENT OF POLICY, AND DEFINITIONS

SEC. 101.SHORT TITLE.

This Act may be cited as the "Cable Television Competition Act of 1992".

SEC. 102. FINDINGS.

The Congress finds and declares the following:

(1) In the early 1960s, the development of the cable television industry in the United States stalled. The industry's plans to wire the Nation's largest cities were in disarray. Overdesigned and uneconomical cable systems were not attracting subscribers in sufficient numbers, largely because of inadequate programming. At the same time, important cable programming services were failing because of low ratings and low revenues. Cable faced a dilemma: It could not attract additional subscribers and increase revenues without new and innovative programming, yet it could not afford to develop such programming without additional subscribers and increased revenues.

(2) In 1984, the Congress moved to deal with this crisis in a comprehensive manner. The Cable Communications Policy Act of 1984 was designed to encourage the growth of cable systems and cable programming efforts for the benefit of consumers through the elimination of unnecessary and burdensome regulation by local franchising authorities.

(3) As the Federal Communications Commission stated in its 1990 report on the cable television industry, the Cable Communications Policy Act of 1984 has achieved much of what Congress intended. Prior to 1984, cable service was available to only 70 percent of American homes, and less than 60 percent of cable subscribers were served by systems with at least 30 channels. Today, cable service is available to 90 percent of American homes, and 90 percent of cable subscribers are served by systems with at least 30 channels. Since 1984, the cable television industry has invested over $5.1 billion in plant and equipment, and annual investment in basic cable programming has more than tripled.

(4) The cable television industry's programming efforts since deregulation have been of particular benefit to consumers. Prior to 1985, there were approximately 40 cable networks available to subscribers. Today, more than 70 cable networks are available to subscribers, and plans are being made to launch more than a dozen new networks in the near future. Through these networks, cable television offers consumers a diverse range of specialized programming options, including gavel-to-gavel coverage of the proceedings of Congress, home shopping services, music videos, 24-hour news reporting, classic movies, and documentaries. Cable television enables a consumer to pick the programming that best meets his or her individual needs and desires.

(5) The growth of the cable television industry since deregulation was fully implemented in 1986 has not been free of controversy. State and local franchising authorities and cable subscribers have complained about rate increases and poor customer service. The cable television industry's competitors have argued that the industry's financial strength, vertical integration into programming, and statutorily-mandated access to both distant and local broadcast signals have given the industry an unfair advantage in the video marketplace.

(6) Although some cable operators have clearly abused the freedom of action afforded them by the Cable Communications Policy Act of 1984, much of the current criticism of the cable television industry is misdirected.

(7) In particular, the debate over cable rates is misleading. In 1972, when the Federal Communications Commission affirmed the legality of local rate regulation, the average price of basic cable service was $5.85. At the end of 1989, it was $16.33—6 percent less than the $17.33 consumers would have paid if cable rates had simply kept up with increases in the Consumer Price Index (CPI). The substantial rate increases in excess of the CIP since full deregulation at the end of 1986 primarily reflect years of excessive local rate regulation that kept both rates and investment in better programming and additional services artificially low. Finally, the latest General Accounting Office survey of cable rates indicates that increases in the so-called "bottom line" measurement of cable rates—the average monthly cable subscriber bill—have moderated substantially over the past two years. In 1990, the "bottom line" increased less than the overall rate of inflation.

(8) In the words of the Federal Communications Commission, today's video marketplace is a "highly dynamic sector in the midst of transition," where relatively new technologies such as cable television and home videotape machines have strongly challenged the formerly dominant broadcast television industry, and even newer technologies such as direct broadcast satellite service are waiting in the wings. In such a dynamic environment, it is difficult to distinguish long-term systemic problems from short-term transitory ones.

(9) The record now before the Congress does not justify massive re-regulation of cable rates; abrogation of the traditional rights of video programmers to control the use of the video programming they develop; or imposition of additional restrictions on cross-ownership, horizontal growth, and vertical integration in the cable industry. In fact, all three of these approaches have the very real potential of crippling the growth of cable programming and service options without significantly benefiting consumers. They also raise serious constitutional questions under the First Amendment.

(10) To the maximum extent, priority should be placed on encouraging competition in the video marketplace rather than re-regulating cable television.

(11) At the same time, in light of the increasing importance of cable service to consumers nationwide, the Federal Communications Commission, in accordance with the universal service policy of the Communications Act of 1934, should be authorized to ensure reasonable access to cable systems—

(A) by regulating the rates charged for basic service by cable systems not subject to effective competition, and

(B) by establishing customer service and technical standards for all cable systems.

(12) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934 (47 U.S.C. 396(a)(5)). The distribution of unique noncommercial, educational programming services, including those transmitted by noncommercial educational television stations serving local communities or markets, advances that interest in providing for the further education of our citizens and encouraging "public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation."

(13) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(14) A primary objective and benefit of our Nation's system of regulation of television and radio broadcasting is the local origination of programming. There is a substantial government interest in ensuring its continuation.

(15) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(16) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(17) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(18) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(19) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(20) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(21) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(22) Cable television systems often are the single most efficient distribution system for television programming. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(23) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the two industries.

SEC. 103. STATEMENT OF POLICY.

It is the policy of the Congress in this Act to—

(1) build upon the substantial success of the Cable Communications Policy Act of 1984 in addressing current concerns over the cable industry's conduct and trends in the video marketplace as a whole;

(2) continue, through market-oriented means, to encourage the cable industry and other video programmers and video programming distributors to provide, in an efficient and effective manner, the widest possible diversity of information sources and services to the public;

(3) further the interests of consumers by enhancing competition in the video programming market by reducing the regulatory burden on the cable industry's competitors, particularly the broadcast television industry;

(4) utilize, to the fullest extent, the expertise of the Federal Communications Commission to monitor changes in the video marketplace and determine whether administrative or legislative action, particularly action to further reduce regulation, is needed to respond to such changes; and

(5) avoid imposing additional regulation on the cable industry or any other video programmer or video programming distributor unless such regulation is clearly necessary to protect the interest of the public.

SEC. 104. DEFINITIONS.

(a) Section 602 of the Communications Act of 1934 (47 U.S.C. 522) is amended by redesignating paragraph (1) as paragraph (2), by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, by redesignating paragraphs (4) through (10) as paragraphs (7) through (13), respectively, by redesignating paragraphs (11) and (12) as paragraphs (16) and (17), respectively, by redesignating paragraph (13) as paragraph (19), by redesignating paragraphs (14) and (15) as paragraphs (23) and (24), respectively, and by redesignating paragraph (16) as paragraph (28).

(b) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately before paragraph (2), as so redesignated, the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;".

(c) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (2), as so redesignated, the following new paragraph:

"(3) the term 'available to a household' or 'available to a home' when used in reference to a multichannel video programming distributor means a particular household which is a subscriber or customer of the distributor or a particular household which is actively and currently sought as a subscriber or customer by a multichannel video programming distributor;".

(d) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (5), as so redesignated, the following new paragraph:

"(6) the term 'cable community' means the households in the geographic area in which a cable system provides cable service;".

(e) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (13), as so redesignated, the following new paragraphs:

"(14) the term 'headend' means the location of any equipment of a cable system used to process the signals of television broadcast stations for redistribution to subscribers;

"(15) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase by subscribers or customers, multiple channels of video programming;".

(f) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) the term 'principal headend' means—

"(A) the headend, in the case of a cable system with a single headend, or

"(B) in the case of a cable system with more than one headend, the headend designated by the cable operator to the Commission as the principal headend, except that such designation shall not undermine or evade the requirements of section 614;".

(g) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (19), as so redesignated, the following new paragraphs:

"(20)(A) the term 'local commerical television station' means any full power television broadcast station, determined by the Commission to be a commerical station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system (for purposes of this subparagraph, a television broadcasting station's television market shall be defined as specified in section 73.3555(d) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include or exclude communities from such station's television market to better effectuate the purposes of this Act);

"(B) where such a television broadcast station would, with respect to a particular cable system, be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station upon agreement to reimburse the cable operator for the incremental copyright costs assessed against such operator as a result of being carried on the cable system;

"(C) the term 'local commercial station' shall not include television translator stations and other passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(21) the term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; or

"(ii) is owned or operated by a municipality and transmits only noncommerical programs for educational purposes; or

"(B) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B));

such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the cable community, (II) a full service station or translator if such station or translator is licensed to a channel reserved for noncommerical educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommerical educational stations;

"(22) the term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

"(A) such station broadcasts during at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations, and a significant part of their programming, in an amount to be determined by the Commission, is locally originated and produced;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity;

"(C) such station complies with interference regulations consistent with their secondary status pursuant to part 74 of title 47, Code of Federal Regulations; and

"(D) such station is located no more than 35 miles from the cable system's headend, or no more than 20 miles if the low power station is located within one of the 50 largest Standard Metropolitan Statistical Areas, and delivers to the input terminals of the signal processing equipment at the cable system headend a signal level of -45 dBm for UHF stations and -49 dBm for VHF stations; nothing in this paragraph shall be construed to grant any low power station primary status for spectrum occupancy;"

(h) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended—

(1) by striking "and" at the end of paragraph (24), as so redesignated; and

(2) by inserting immediately after such paragraph (24) the following new paragraphs:

"(25) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission;

"(26) the term 'video programmer' means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale;

"(27) the term 'Line 21 closed caption' means a data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel of a television signal; and".

(i) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by amending paragraph (4), as so redesignated, to read as follows:

"(4) the term 'basic cable service' means any service tier which includes retransmitted local television broadcast signals; public, educational, or governmental access channels; or video programming services providing comprehensive, gavel-to-gavel coverage of the proceedings of either House of Congress;".

TITLE II—EXPANDING COMPETITION IN THE VIDEO MARKETPLACE THROUGH REDUCED REGULATION

SEC. 201. ELIMINATION OF THE RESTRICTION ON MULTIPLE OWNERSHIP OF BROADCAST STATIONS.

In order to encourage the development of regional broadcast operations and networks and enhance the ability of the broadcast industry as a whole to compete with the cable television industry and other video programming distributors, the regulation adopted by the Federal Communications Commission to limit the total number of broadcast stations in any service that can be owned, operated, or controlled by a party or group of parties under common control (47 C.F.R. 73.3555(d)) is hereby repealed.

SEC. 202 EXPANSION OF THE RURAL EXEMPTION TO THE CABLE-TELEPHONE CROSS-OWNERSHIP PROHIBITION.

Section 613(b)(3) of the Communications Act of 1934 (47 U.S.C. 533(b)(3)) is amended by striking "(as defined by the Commission)" and inserting after the period the following: "For the purposes of this paragraph, the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of enactment of the Cable Television Competition Act of 1992).".

SEC. 203. FRANCHISE REFORM.

(a) FRANCHISE RENEWALS.—Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended—

(1) in subsection (a), by inserting "written" before "request" and by inserting at the end of the subsection the following: "Commencement of proceedings under this section by the franchising authority on its own initiative or timely submission of a written request by the cable operator specifically asking for the commencement of such proceedings is required for the cable operator to invoke the renewal procedures set forth in subsections (a) through (g). In accordance with the provisions of subsection (j), the franchising authority may on its own initiative commence proceedings under this subsection during the 6-month period after the tenth anniversary of the current franchise term.";

(2) in subsection (b)—

(A) by inserting the following new paragraph at the beginning of the subsection:

"(1) The franchising authority shall have 1 year from the date it commences on its own initiative proceedings under subsection (a) or from the date it receives a timely written request from the cable operator specifically asking for the commencement of such proceedings to compare such proceedings. This period may be extended by mutual agreement between the franchising authority and the cable operator.";

(B) by renumbering the following paragraphs accordingly;

(C) by deleting "a proceeding" in paragraph (2), as renumbered, and inserting in lieu thereof "proceedings under subsection (a)"; and

(D) by inserting "reasonable" before "date" in paragraph (4), as renumbered;

(3) in subsection (c), by inserting "pursuant to subsection (b)" before the first comma, by deleting "completion of any proceedings under subsection (a)" and inserting in lieu thereof "date of submission of the cable operator's proposal pursuant to subsection (b)", by inserting "cable" before the third occurrence of "operator", and by inserting ", throughout the franchise term" after "whether";

(4) by amending subsection (d) to read as follows:

"(d)(1) Any denial of a proposal for renewal which has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c).

"(2) A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which such failure to comply or such events occur—

"(A) after the effective date of this title and before the date of enactment of the Cable Television Competition Act of 1992 unless the franchising authority has provided the cable operator with notice and the opportunity to cure; or

"(B) after the date of enactment of the Cable Television Competition Act of 1992 unless the franchising authority has provided the cable operator with written notice and the opportunity to cure.

"(3) A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which it is documented that the franchising authority—

"(A) has waived its right to object, or has effectively acquiesced, to such failure to comply or to such events prior to the date of enactment of the Cable Television Competition Act of 1992, or

"(B) has waived in writing its right to object to such failure to comply or to such events after the date of enactment of the Cable Television Competition Act of 1992."; and

(5) at the end of the section, by inserting the following new subsections:

"(i) Notwithstanding the provisions of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator under this section.

"(j) Notwithstanding any other provision of law, a franchising authority may establish as part of any franchise or franchise renewal granted after the date of enactment of the Cable Television Competition Act of 1992, a provision permitting such franchising authority to commence the process set forth in subsections (a) through (g) of this section during the 6-month period immediately following the tenth anniversary of the current franchise term, regardless of the duration of such franchise or franchise renewal beyond such date. Nothing in this subsection shall be construed to prohibit a cable operator from seeking renewal under subsection (h).".

(b) MULTIPLE FRANCHISES.—(1) Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended—

(A) by striking "1 or more" in paragraph (1);

(B) by adding at the end of provision (1) the following: "No franchising authority shall grant an exclusive franchise to any cable operator or unreasonably refuse to award to an applicant an additional competitive franchise with terms substantially equivalent to those granted the incumbent cable operator. Any applicant whose application for an additional competitive franchise has been denied by a final decision of a franchising authority may appeal such final decision pursuant to the provisions of section 635."; and

(C) by adding at the end thereof the following new paragraph:

"(4) In awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the geographic area within the jurisdiction of such franchising authority.".

(2) Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," immediately after "section".

(c) NO PROHIBITION AGAINST A LOCAL OR MUNICIPAL AUTHORITY OPERATING AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.—Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by adding "and subsection (f)" before the comma in provision (b)(1) and by adding the following new subsection at the end thereof:

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic area within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.".

SEC. 204. MONITORING COMPETITION IN THE VIDEO MARKETPLACE.

(a) BIENNIAL REPORT REQUIRED.—Starting in 1993, the Federal Communications Commission shall prepare and submit to the President and Congress biennial reports regarding the level of competition in the video marketplace. Such a report shall be submitted not later than 60 days after the convening of each new Congress.

(b) CONTENT OF REPORT.—(1) Each report submitted pursuant to this section shall examine, among any other factors deemed appropriate by the Federal Communications Commission, changes in—

(A) the structure of the domestic and international video marketplace, including ownership and joint venture patterns, vertical and horizontal consolidation, and marketing and pricing approaches;

(B) the viewing and buying habits of the general public;

(C) video programming production and distribution technology; and

(D) the legislative and administrative regulatory structure that shapes the video marketplace.

(2) Each part submitted pursuant to this section shall discuss the impact of the factors set forth in paragraph (1) on the level of competition in the video marketplace and shall make specific recommendations regarding administrative and legislative steps that could be taken to reduce the regulation of, and enhance competition within, the video marketplace.

TITLE III—AMENDMENTS TO THE CABLE COMMUNICATIONS POLICY ACT OF 1984 AND OTHER MATTERS

SEC. 301. REGULATION OF CABLE RATES.

(A) Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

"SEC. 623. REGULATION OF CABLE RATES.

"(A) SCOPE OF RATE REGULATION AUTHORITY.—No Federal agency or State shall regulate rates for provision of cable service or installation or rental of equipment (including remote control devices) used for the receipt of such service except to the extent provided under this section and section 612. No franchising authority shall regulate rates for provision of cable service, provision of any other communications service provided over a cable system to cable subscribers, or installation or rental of equipment (including remote control devices) used for the receipt of such services except to the extent provided under this section, section 612, and section 621.

"(b) RATE REGULATION BY THE COMMISSION.—(1) If the Commission finds that a cable system is not subject to effective competition, the Commission shall determine and prescribe just and reasonable rates for the provision on such system of basic cable service and the installation or rental of equipment (including remote control devices) used for the receipt of such service. The Commission shall further ensure that such cable system, in the provision of programming services offered on a per channel or per program basis, does not unreasonably or unjustly discriminate against subscribers who subscribe only to basic cable service or otherwise penalize such subscribers for choosing to subscribe to a regulated service tier.

"(2) Within 180 days after the date of enactment of the Cable Television Competition Act of 1992, the Commission shall promulgate procedures, standards, requirements, and guidelines to establish just and reasonable rates to be charged by a cable system not subject to effective competition for basic cable service and for the installation or rental of equipment (including remote control devices) used for the receipt of such service.

"(3)(A) Except as provided in subparagraph (B), no provision of this Act shall prevent a cable operator from adding or deleting from a basic cable service tier any video programming.

"(B) No cable operator shall delete from a basic service tier retransmitted local television broadcast signals; public, educational, or governmental access channels; or video programming services providing comprehensive, gavel-to-gavel coverage of the proceedings of either House of Congress: *Provided however*, That a cable operator may move such signals, channels, and services to a common basic service tier.

"(c) RATE REGULATION BY A FRANCHISING AUTHORITY.—(1) Within 180 days of the date of enactment of the Cable Television Competition Act of 1992, the Commission shall promulgate regulations to authorize a franchising authority, if it so chooses, to implement subsection (b)(1) in lieu of the Commission and in a manner consistent with the procedures, standards, requirements, and guidelines established pursuant to subsection (b)(2).

"(2) Upon petition by a cable operator, the Commission shall review the implementation of subsection (b)(1) by a franchising authority. If the Commission finds that such franchising authority has acted inconsistently with the procedures, standards, requirements, and guidelines established pursuant to subsection (b)(2), it shall grant appropriate relief and, if necessary, revoke such franchising authority's authorization to implement subsection (b)(1).

"(d) CONSIDERATION OF RATE INCREASE REQUESTS.—A cable operator may file with the Commission, or a franchising authority authorized to regulate rates pursuant to subsection (c), a request for a rate increase in the price of a basic cable service tier or in the price of installing or renting equipment (including remote control devices) used in the receipt of basic cable service. Any such request upon which final action is not taken within 180 days shall be deemed granted.

"(e) EFFECTIVE COMPETITION DEFINED.—For the purposes of this section, a cable system shall be considered subject to effective competition if—

"(1) one or more independently-owned multichannel video programming distributors offer service, in competition with such cable system, to at least 50 percent of the homes passed by such cable system, and

"(2) at least 10 percent of such homes subscribe to such service.

"(f) DISCRIMINATION PROHIBITED.—(1) A cable operator shall have a rate structure for the provision of cable service that is uniform throughout the geographic area coered by the franchise granted to such cable operator.

"(2) No provision of this title shall be construed to prohibit any Federal agency, State, or franchising authority from—

"(A) prohibiting discrimination among subscribers to any service tier; or

"(B) requiring and regulating the installation or rental of equipment to facilitate the reception of cable service by hearing-impaired individuals.".

SEC. 302. CUSTOMER SERVICE STANDARDS AND REQUIREMENTS.

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended—

(1) in subsection (a), by inserting "may establish and" immediately after "authority";

(2) by amending subsection (b) to read as follows:

"(b) ENFORCEMENT POWERS OF FRANCHISING AUTHORITY.—A franchising authority may enforce—

"(1) any provision, contained in any franchise, relating to requirements described in subsection (a), to the extent not inconsistent with this title;

"(2) any customer service standard established by the Commission pursuant to subsection (d); or

"(3) any customer service requirement that exceeds the standards established by the Commission pursuant to subsection (d) but only if such requirement—

"(A) exists as part of a franchise or franchise renewal on the date of enactment of the Cable Television Competition Act of 1992; or

"(B) is imposed by—

"(i) a municipal ordinance or agreement in effect on the date of enactment of the Cable Television Competition Act of 1992, or

"(ii) a State law."; and

(3) by adding at the end the following new subsections:

"(d) ESTABLISHMENT OF CUSTOMER SERVICE STANDARDS BY THE COMMISSION.—The Commission, within one year after the date of enactment of the Cable Television Competition Act of 1992, shall, after notice and an opportunity for public comment, prescribe and make effective regulations to establish customer service standards to ensure that all cable subscribers are fairly served. Thereafter, the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that cable subscribers are fairly served.

"(e) COMMISSION REVIEW OF A FRANCHISING AUTHORITY'S ENFORCEMENT OF CUSTOMER SERVICE STANDARDS AND REQUIREMENTS.—Upon petition by a cable operator, the Commission shall review the enforcement by a franchising authority of customer service standards and requirements under subsection (b). If the Commission finds that such franchising authority has acted inconsistently with the authorization granted by subsection (b), it shall grant appropriate relief.".

SEC. 303. MINIMUM TECHNICAL STANDARDS AND TESTING REQUIREMENTS.

Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e) ESTABLISHMENT AND ENFORCEMENT OF MINIMUM TECHNICAL STANDARDS BY THE COMMISSION.—(1)(A) The Commission shall, within one year after the date of enactment of the Cable Television Competition Act of 1992, prescribe and make effective regulations that establish minimum technical standards, and requirements for testing such standards, to ensure adequate signal quality for all classes of video programming signals provided over a cable system, and thereafter shall periodically update such standards and requirements to reflect improvements in technology.

"(B) The Commission shall establish guidelines and procedures for complaints or petitions asserting the failure of a cable operator to meet the standards or requirements established pursuant to this subsection and may require compliance with and enforce any such standard or requirement. The Commission shall also establish procedures and guidelines for the enforcement of such standards and requirements by a franchising authority.

"(C) The Commission, upon a determination that such action is required in the public interest, may modify or waive any standard or requirement established pursuant to this section upon petition from a cable operator or franchising authority.

"(2) Neither a State nor political subdivision thereof nor a franchising authority shall establish or enforce any technical standards or testing requirements in addition to, or different from, the standards or requirements established by the Commission.

"(3) Upon petition by a cable operator, the Commission shall review the enforcement of minimum technical standards and testing requirements by a franchising authority. If the Commission finds that such franchising authority has acted inconsistently with the procedures and guidelines established pursuant to paragraph (1)(B), it shall grant appropriate relief.".

SEC. 304. CONSUMER PROTECTION.

(a) PROTECTION OF SUBSCRIBER PRIVACY.—Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 55(c)(1)) is amended by inserting immediately before the period at the end the following: "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

(b) SUBSCRIBER BILL ITEMIZATION.—Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, in accordance with standards prescribed by the Commission, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) the amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid;

"(2) the amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels; and

"(3) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.".

(c) SERVICES AND EQUIPMENT NOT AFFIRMATIVELY REQUESTED.—Section 623 of the Communications Act of 1934 (47 U.S.C. 543), as amended by this Act, is further amended by adding at the end the following new subsection:

"(g) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.".

(d) RIGHT TO REFUSE PREMIUM CHANNEL SERVICE.—Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding the following new paragraph:

"(3)(A) If a cable operator provides a "premium channel" without charge to cable subscribers who do not subscribe to the "premium channel(s)", the cable operator shall, not later than 60 days before such "premium channel" is provided without charge—

"(i) notify all cable subscribers that the cable operator plans to provide a "premium channel(s)" without charge;

"(ii) notify all cable subscribers when the cable operator plans to provide a "premium channel(s)" without charge;

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the "premium channel" be blocked; and

"(iv) block the channel carrying the "premium channel" upon the request of a subscriber.

"(B) For the purposes of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NR-17 or R.".

(e) NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE EQUIPMENT.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"SEC. 624A. NOTICE AND OPTIONS TO CONSUMERS REGARDING CONSUMER ELECTRONICS EQUIPMENT.

"(a) This section may be cited as the 'Cable Equipment Act of 1992'.

"(b) The Congress finds that—

"(1) the use of converter boxes to receive cable television may disable certain functions of televisions and VCRs, including, for example, the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain special features of a television such as a 'picture-in-picture' feature; and

"(2) cable operators should, to the extent possible, employ technology that allows cable television subscribers to enjoy the full benefit of the functions available on televisions and VCRs.

"(c) As used in this section:

"(1) the term 'converter box' means a device that—

"(A) allows televisions that do not have adequate channel tuning capability to receive the service offered by cable operators; or

"(B) decodes signals that cable operators deliver to subscribers in scrambled form.

"(2) the term 'VCR' means a videocassette recorder.

"(d)(1) cable operators shall not scramble or otherwise encrypt any local broadcast signal, except where authorized under paragraph (3) of this subsection to protect against the substantial theft of cable service.

"(2) Notwithstanding paragraph (1) of this subsection, there shall be no limitation on the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' televisions or VCRs.

"(3) Within 180 days after the date of enactment of this section, the Commission shall issue regulations prescribing the circumstances under which a cable operator may, if necessary to protect against the substantial theft of cable service, scramble or otherwise encrypt any local broadcast signal.

"(4) The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this subsection in light of any actions taken in response to regulations issued under subsection (i).

"(e) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to—

"(1) notify subscribers that if their cable service is delivered through a converter box, rather than directly to the subscribers' televisions or VCRs, the subscribers may be unable to enjoy certain functions of their televisions or VCRs, including the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use a certain television feature such as 'picture-in-picture';

"(2) offer new and current subscribers who do not receive or wish to receive channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, by direct connection to the subscribers' televisions or VCRs, without passing through a converter box; and

"(3) offer new and current subscribers who receive, or wish to receive, channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, in such a way that those channels the reception of which does not require a converter box are delivered to the subscribers' televisions or VCRs without passing through a converter box.

"(f) Any charges for installing or reinstalling cable service pursuant to subsection (e) shall be subject to the provisions of Section 623(b)(1).

"(g) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the use of remote control devices that shall—

"(1) require a cable operator who offers subscribers the option of renting a remote control unit—

"(A) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(B) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(2) prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(h) Within 180 days after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and VCRs.

"(i) Within 1 year after the date of enactment of this section, the Commission shall issue regulations requiring such actions as may be necessary to assure the compatibility interface described in subsection (h).".

"(f) REVIEW OF HOME SHOPPING NETWORKS.—Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry to determine whether broadcast television stations whose programming consists predominately of sales presentations are serving the public interest, convenience, and necessity. The Commission shall take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.

SEC. 305. HOME WIRING.

Section 624 of the Communications Act of 1934 (17 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules and regulations concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.".

SEC. 306. MINORITY PROGRAMMING.

Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source (if such source is not affiliated with the cable operator), if such programming is not already carried on the cable system. The channel capacity used to provide programming from a qualified minority programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming on that cable system under this subsection.

"(2) For purposes of this subsection—

"(A) the term 'qualified minority programming source' means a programming source which devotes significantly all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned; and

"(B) the term 'minority' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.".

SEC. 307. RETRANSMISSION CONSENT.

(a) Section 325 of the Communications Act of 1934 (47 U.S.C. 235) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b)(1) PROHIBITION ON RETRANSMISSION OF BROADCAST SIGNAL WITHOUT CONSENT.—(A) Following the date that is one year after the date of enactment of this section, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, without the express authority of the originating station, except as permitted by section 614.

"(B) The provisions of this section shall not apply to—

(i) retransmission of the signal of a noncommercial broadcasting station;

(ii) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

(iii) retransmission of the signal of a broadcasting station that is owned operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

(iv) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this subparagraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of this subsection.

"(C) Within 45 days after the date of enactment of this subsection, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in subparagraph (B). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for basic cable service and shall ensure that rates for basic cable service are reasonable. Such rulemaking proceeding shall be completed within six months after its commencement.

"(2) ELECTION OF RETRANSMISSION CONSENT OR MANDATORY CARRIAGE.—(A) The regulations required by paragraph (1)(C) shall require that television stations, within one year after the date of enactment of this subsection and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which serves the same geographic area, a station's election shall apply to all such cable systems.

"(B) If an originating television station elects under subparagraph (A) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(3) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(4) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.".

SEC. 308. CARRIAGE OF LOCAL BROADCAST SIGNALS.

(a) Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is amended by inserting immediately after section 613 the following new sections:

"SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

"(a) Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b)(1)(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to a maximum of one-third of the aggregate number of usable activated channels of such system.

"(2) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such signals shall be carried on its cable system, except that—

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined under section 76.53 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3)(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and Line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, the operator may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4)(A) The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

"(B) At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations have been changed to conform with such modified standards.

"(5) Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

"(6) Each signal carried in fulfillment of carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of this station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any disputes regarding the positioning of a local commercial television station shall be resolved by the Commission.

"(7) Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and material for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at reasonable rates.

"(8) A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section for the channel positioning rights provided to such stations under this section, except that—

"(A) any such station, if it does not deliver to the principal headend of the cable system either a signal of -45 dBm for UHF signals or -49 dBm for VHF signals at the input terminals of the signal processing equipment, shall be required to bear the costs associated with delivering a good quality signal or a baseband video signal;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as reimbursement for the incremental copyright costs assessed against such cable operator for carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b), the cable operator shall be required to carry qualified low power stations until such channels are filled.

"(d)(1) Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signals of such station or has otherwise failed to comply with the channel positioning or repositioning requirements of this section. The cable operator shall, within 30 says after such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met is obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device, or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

"SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION SIGNALS.

"(a) In addition to the carriage requirements set forth in section 614, each operator of a cable system (hereafter in this section referred to as an 'operator') shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b)(1) Subject to paragraphs (2) and (3) and subsection (e), each operator shall carry, on the cable system of that operator, each qualified local noncommercial educational television station requesting carriage.

"(2)(A) Notwithstanding paragraph (1), an operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of only one qualified local noncommercial educational television station; except that an operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the operator shall carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3)(A) Subject to subsection (c), an operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operators beyond the presence of any qualified local noncommercial educational television station, the operator shall import the signal of at least one qualified noncommercial educational station to comply with subparagraph (A)(i).

"(C) The operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television station affiliated with the same network if the programming of such additional station is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) An operator of a system described in subparagraph (A) which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990 shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) Notwithstanding any other provisions of this section, all operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular operator and a particular such station, upon the written consent of the operator and the station.

"(d) An operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so by placing such additional stations on public, educational or governmental channels not in use for their designated purpose.

"(e) An operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) A qualified local noncommercial educational television station whose signal is carried by an operator shall not assert any network non-duplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that operator.

"(g)(1) An operator shall retransmit in its entirety the primary video, accompanying audio, and Line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the operator.

"(2) An operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section, with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) The signal of a qualified local noncommercial educational television station shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed on by the station and the cable operator. The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the operator, at least 30 days in advance of such repositioning, has provided written notice to the station and to all subscribers of the cable system. For purposes of this paragraph, repositioning includes deletion of the station from the cable system.

"(4) Notwithstanding the other provisions of this section, an operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality, as may be defined by the Commission.

"(h) Signals carried in fulfillment of the carriage obligations of an operator under this section shall be available to every subscriber as part of the cable system's lowest priced service that includes the retransmission of local television broadcast signals.

"(i)(1) An operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal to the principal headend of the cable system.

"(2) Notwithstanding the provisions of this section, an operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provisions of subsection (c), where such signal would be considered as a distant signal for copyright purposes unless such station reimburses the operator for the incremental copyright costs assessed against such operator as a result of such carriage.

"(j)(1) Whenever a qualified local noncommercial educational television station believes that an operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such operator has failed to comply with such requirements and state the basis for such allegations.

"(2) The Commission shall afford such operator an opportunity to present data, views, and arguments to establish that the operator has complied with the signal carriage requirements of this section.

"(3) Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the operator has complied with the requirements of this section. If the Commission determines that the operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) An operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) For purposes of this section, 'qualified local noncommercial educational television station' is defined as a qualified noncommercial educational television station—

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.".

SEC. 306. JUDICIAL REVIEW.

Section 635 of the Communication Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.".

SEC. 310. DIRECT BROADCAST SATELLITE SERVICE.

(a) REQUIREMENTS.—(1) The Federal Communications Commission shall require, as a condition of any provision, initial authorization, or renewal thereof, for a direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent of such capacity, exclusively for nonduplicated, noncommercial educational and informational programming.

(2) Such provider may utilize for any purpose any unused channel capacity required to be reserved under this section pending the actual use of such channel capacity for nonduplicated, noncommercial educational and informational programming.

(3) Such provider shall meet the requirements of this section by leasing capacity on its system upon reasonable terms, conditions, and prices based only on the direct costs of transmitting programming supplied by national educational programming suppliers, including qualified noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions. Such provider shall not exercise any editorial control over any video programming provided pursuant to this section.

(b) STUDY PANEL.—There is established a study panel which shall be comprised of one representative each from the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment, selected by the head of each such entity. Such study panel shall, within 2 years after the date of enactment of this Act, submit a report to the Congress containing recommendations on—

(1) methods and strategies for promoting the development of programming for transmission over the channels reserved pursuant to subsection (a)(1);

(2) methods and criteria for selecting programming for such channels that avoid conflicts of interest and the exercise of editorial control by a direct broadcast satellite service provider; and

(3) identifying existing and potential sources of funding for administrative and production costs for such programming.

(c) DEFINITION.—As used in this section, the term "direct broadcast satellite service" includes—

(1) any satellite system licensed under part 100 of title 47, Code of Federal Regulations, and

(2) any distributor using a fixed service satellite system to provide video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

SEC. 311. SEPARABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application as to which it is held invalid, shall not be affected thereby.

SEC. 312. EFFECTIVE DATE.

Except as otherwise provided in this Act, the requirements of this Act shall be effective 60 days after the date of enactment of this Act. The Federal Communications Commission may promulgate such regulations as it determines are necessary to implement such requirements.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, January 30, 1992, at 9 a.m. to hold a hearing on the nomination of Ronald M. Whyte, to be U.S. district judge for the Northern District of California, Julie E. Carnes, to be U.S. district judge for the Northern District of Georgia, Jon P. McCalla, to be U.S. district judge for the Western District of Tennessee, Nancy G. Edmunds, to be U.S. district judge for the Eastern District of Michigan, and David W. McKeague, to be U.S. district judge for the Western District of Michigan.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CONVENTIONAL FORCES AND ALLIANCE DEFENSE

Mr. KERRY. Mr. President, I ask unanimous consent that the Subcommittee on Conventional Forces and Alliance Defense of the Committee on Armed Services be authorized to meet on Thursday, January 30, 1992, at 3:30 p.m., in executive session with the Subcommittee on Defense Cooperation of the North Atlantic Assembly to discuss European security issues.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, January 30, 1992, at 2 p.m. to hold a hearing on the nomination of Sandra S. Beckwith, to be U.S. district judge for the Southern District of Ohio, Philip G. Reinhard, to be U.S. district judge for the Northern District of Illinois, Frederick J. Scullin, to be U.S. district judge for the Northern District of New York, Steven D. Merryday, to be U.S. district judge for the Middle District of Florida, and K. Michael Moore, to be U.S. district judge for the Southern District of Florida.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, January 30, 1992, at 10 a.m. to conduct a hearing on the state of the Union's cities.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GROWTH—NOT GUNS

● Mr. SIMON. Mr. President, when I served in the House, I had the privilege of working on the Budget Committee with Congressman Barber B. Conable, Jr., a commonsense, practical person, who also had some vision of how we can build a better nation and a better world.

He was named president of the World Bank and served that distinguished body for 5 years as its chief executive.

Recently, in the Washington Post—while Congress was in recess—he had an article suggesting that nations that spend an excessive amount on arms should not be given fiscal assistance.

I heartily concur.

I hope Barber Conable's wisdom will not be lost on the administration and on the committees of both Houses.

I urge my colleagues and their staffs who did not see the Barber Conable column when it appeared to read it.

Mr. President, I ask to insert his article into the RECORD at this point.

The article follows:

GROWTH—NOT GUNS

(By Barber B. Conable, Jr.)

The world is changing fast. We could not find a better time, or a better coincidence of circumstances, to use the momentum of change for lasting benefit to a humanity too long beset by the cost of the arms race.

While the United States and the Soviet republics are entering a new competition not in building but in reducing their military expenditures, there is a possible destructive side effect. Excess arms stockpiles and underused manufacturing facilities create new incentives for producers to sell and for potential customers to expand their purchases of arms at bargain prices. But in this capital-short world, how much investment can appropriately be allocated to arms?

Population growth, particularly in the Third World, depletion of natural resources, accumulating environmental costs, continuing debt problems and the slowing of the global economy all contribute to the insatiable demands for capital. The growing gap between capital needs and capital availability should concentrate minds. With the end of the Cold War it would be consummate irony for continued or higher priority to be given to the arms trade.

Iraq dramatizes the arms problem in ways that can be easily understood. Vast sums were diverted there to the importation and manufacture of modern arms. To some degree Pakistan, India, North Korea and Israel have had similar programs, including investment in military nuclear weapons. While atomic projects are not a large proportion of overall defense expenditures, they capture public attention, as they should.

Everywhere in the world, not just in Eastern Europe and the U.S.S.R., the empowerment of peoples proceeds, with a popular surge toward democracy. But where democratic roots are shallow, existing military establishments remain potent and even decisive political forces. This power can be overwhelming when the internal decision-making process sets priorities for expenditure of tax resources and international financial support.